

No. 11956

United States
Court of Appeals
for the Ninth Circuit

SOUTHERN CALIFORNIA FISHERMAN'S
ASSOCIATION, W. S. OHIRA, KOTO
YAMAMOTO, M. IWASAKI, ROKU SEIKO,
BEN (BENKICHI) MAEDA, SEN TANAKA,
MIJOJI KAWASAKI, NAGA NOMURA,
YOSABURO HAMA, T. KOISO, T. NONO-
SHITA, JIM TEIZO HATASHITA and K.
NAKAMURA,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED
JAN 12 1949

PAUL P. O'BRIEN,

Typo Press, 1017 California Drive, Burlingame, Calif.

CLERK

10-49

No. 11956

United States
Court of Appeals
for the Ninth Circuit

SOUTHERN CALIFORNIA FISHERMAN'S
ASSOCIATION, W. S. OHIRA, KOTO
YAMAMOTO, M. IWASAKI, ROKU SEIKO,
BEN (BENKICHI) MAEDA, SEN TANAKA,
MIJOJI KAWASAKI, NAGA NOMURA,
YOSABURO HAMA, T. KOISO, T. NONO-
SHITA, JIM TEIZO HATASHITA and K.
NAKAMURA,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

STUDY TO CLIMATE

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

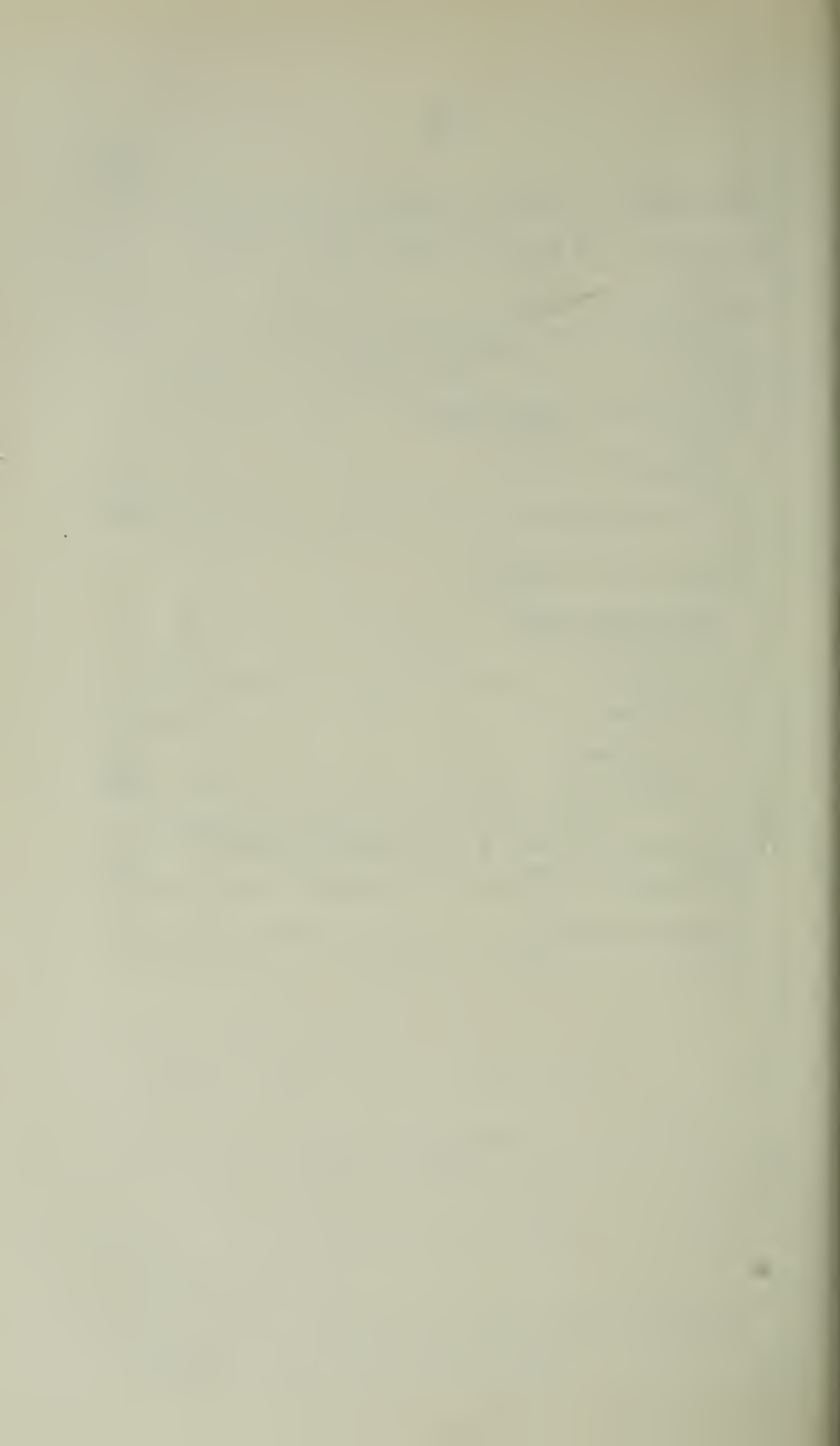
	PAGE
Affidavit of A. L. Wirin filed April 15, 1946..	13
Answer of Southern California Japanese Fishermen's Association	61
Appeal:	
Certificate of Clerk to Transcript of Record on	34
Certificate of Clerk to Supplemental Transcript of Record on.....	70
Counter-Designation of Record on.....	67
Designation of Record on.....	59
Designation of Matter Described in Counter-Designation as Amended on.....	127
Notice of	31
Statement of Points on.....	57
Stipulation and Order re Record on.....	32
Withdrawal of Item 3 of Counter-Designation on	68
Certificate of Clerk to Transcript of Record on Appeal	34

ii.

	PAGE
Certificate of Clerk to Supplemental Transcript of Record on Appeal.....	70
Complaint, Amended	2
Counter-Designation of Contents of Record on Appeal	67
Designation of Record on Appeal (U.S.C.A.)	59
Designation for the Printing of Matter Described in Counter - Designation as Amended (U.S.C.A.).....	127
Exhibit No. 1 (Joint)—Findings from Appraisal Reports submitted by Ralph M. Hults to the Lands Division, U. S. Dept. of Justice	35
Findings of Fact and Conclusions of Law..	20
Judgment and Decree in Condemnation.....	27
Minute Orders:	
April 29, 1946—Hearing on Motion to Strike from Answer and for Setting for Trial..	66
Oct. 2, 1946—Trial.....	17
Aug. 21, 1947—Order re Parcel 373-A.....	19
Motion to Strike from Answer of Southern California Japanese Fishermen's Assn.....	64
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	31
Order Granting Motion to Strike from Answer (Minute Order, April 29, 1946).....	66

iii.

	PAGE
Statement of Points on Appeal (U.S.C.A.)...	57
Stipulation and Order re Record on Appeal..	32
Stipulation of Facts.....	14
Transcript of Proceedings, Reporter's.....	71
Witness for Defendants:	
Ohira, Dr. W. S.	
—direct	108
Witness for Plaintiff:	
Hults, Ralph M.	
—direct	74
—cross	88
—redirect	97
—recross	100
Withdrawal of Item 3 of Counter-Designation of Contents of Record on Appeal.....	68
Notice of Filing	69



NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

A. L. WIRIN,

FRED OKRAND,

257 S. Spring St.,

Los Angeles 12, Calif.

For Appellee:

JAMES M. CARTER,

United States Attorney,

GEORGE F. HURLEY,

Special Attorney, Lands Division,

Department of Justice,

600 U. S. Post Office and Court House

Bldg.,

Los Angeles 12, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the Southern District of California, Central
Division

No. 2078-H Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FORTY ACRES OF LAND, MORE OR LESS,
SITUATE ON TERMINAL ISLAND IN
THE LOS ANGELES HARBOR, COUNTY
OF LOS ANGELES: TOGETHER WITH
CERTAIN PRIVATE LEASEHOLDS, PER-
MITS AND OTHER INTERESTS SUBOR-
DINATE TO THE CITY OF LOS ANGELES
AND THE BOARD OF HARBOR COMMIS-
SIONERS OF THE CITY OF LOS ANGE-
LES: CITY OF LOS ANGELES, a municipal
corporation; . . . SOUTHERN CALIFOR-
NIA JAPANESE FISHERMAN'S ASSO-
CIATION . . . W. S. O'HIRA . . . MRS. K.
YAMAMOTO . . . [2] T. KOISO . . . Y.
HAMA; N. NOMURA; . . . MRS. SEN TA-
NAKA; BEN MAEDA; . . . T. NONOSHITA;
JIM HATASHITA; K. NAKAMURA; . .
M. IWASAKI . . . M. SEIKO; . . . M. KA-
WASAKI . . . ,

Defendants.

AMENDED COMPLAINT IN
CONDEMNATION

The United States of America, the plaintiff, by
Wm. Fleet Palmer, United States Attorney, and

Irl D. Brett, Special Attorney, Lands Division, Department of Justice, as its attorney, on application of the Secretary of the Navy of the United States, and under direction of and by authority of the Attorney General of the United States, no defendant having been served, files as of course this its Amended Complaint, and for cause of action against the above named defendants, complains and alleges:

I.

Plaintiff, during all the times herein mentioned. was and now is a sovereign, empowered and authorized to acquire by purchase or the exercise of the power of Eminent Domain, any real or personal property or any interest therein, wherever situate within its jurisdiction, necessary for any public use or necessary for the future proper development and control of any public use, or for any purpose necessary to the due exercise of its power and the performance of its duties, including the acquisition of lands or interests therein for the establishment or development of Naval shore activities by the construction of temporary or permanent public works, including buildings, facilities, accessories and services, and such temporary and emergency construction or acquisition of buildings and facilities including the acquisition of land at localities inside the United States needed by the Navy as may be specifically approved by the Secretary of the Navy including the acquisition of additional facilities on Terminal Island at Los Angeles, Cali-

fornia, and for such other uses as may be authorized by Congress or by Executive Order.

II.

This is a suit of a civil nature, brought by the plaintiff under the authority of and pursuant to the provisions of an Act of Congress approved August 1, 1888 (25 Stat. 357), and acts amendatory thereof. [4]

III.

That plaintiff is a sovereign empowered and authorized to acquire, by purchase or the exercise of Eminent Domain, any real or personal property or any interest therein wherever situate within its jurisdiction, necessary for any public use or necessary for the proper development or control of any public use or for any purpose necessary for the due exercise of its power and the performance of its duties and particularly for national defense.

IV.

That by an Act of Congress approved December 17, 1941 (Public Law 353, 77th Congress, Chapter 591, First Session), entitled "Third Supplemental National Defense Appropriation Act, 1942," it is provided among other things, to wit:

"Title II—Navy Department
Bureau of Yards and Docks

Public Works, Bureau of Yards and Docks

Temporary and emergency construction: For temporary and emergency construction or acquisition of buildings and facilities, including

the acquisition of land, at localities inside and outside the United States, needed by the Navy, as may be specifically approved by the Secretary of the Navy, including collateral public works items, \$300,000.00. * * *''

That by an Act of Congress approved December 26, 1941 (Public Law 378, 77th Congress, Chapter 630, First Session), entitled "An Act to authorize the Secretary of the Navy to proceed with the construction of certain public works, and for other purposes," it is provided *inter alia*:

"There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, \$310,000,000 for the establishment or development of naval shore activities by the construction of such temporary or permanent public works as the Secretary of the [5] Navy may consider necessary, including buildings, facilities, accessories, and services, with which shall be included the authority to acquire the necessary land * * *''

That the Secretary of the Navy has selected for acquisition by the United States of America, the interests in the lands hereinafter described and has designated that such interests in said lands are suitable and necessary for the purposes of the United States and particularly for the purposes defined in the above quoted Acts of Congress and said selection, designation and determination have been and now are in full force and effect.

That there are sufficient funds now available with which the plaintiff can and is authorized to pay just compensation for the land or interest in the land as sought to be taken and condemned herein in whatever sum may be ultimately awarded and adjudged in this proceeding as just compensation . . . [6]

VI.

That the purpose for which plaintiff is taking said interests in said land and the appurtenances thereto, and the improvements thereon, is necessary and constitutes a public use, and the use to which said property is to be applied is a use authorized by law; that the acquisition thereof by the plaintiff is and will be of greatest public benefit and to the least private injury; that plaintiff is informed and believes, and upon such ground alleges that none of said property has been heretofore appropriated to any public use; and if any part or portion thereof has been heretofore appropriated to a public use, the use for which it is herein sought to be condemned and appropriated is a more necessary and paramount public use.

VII.

That the Secretary of the Navy of the United States of America has executed and the plaintiff has filed in this Court a Declaration of Taking pursuant to the provisions of the Act of February 26, 1931 (46 Stat. 1421; Title 40, Sec. 258(a), U.S.C.A.), wherein and whereby said land hereinbefore described as Area 1 is taken for the use and

benefit of the United States of America as aforesaid; that with the filing of said Declaration of Taking, plaintiff has paid into the Registry of this Court, to the use of the persons entitled thereto, as the estimated just compensation for the taking of said Area 1, the sum of Three Hundred Thousand and no/100 Dollars (\$300,000.00).

VIII.

That in addition to the property hereinabove described and designated as Area 1, the Secretary of the Navy has selected and designated as suitable and necessary for the purposes of the United States, and as required in the furtherance of national defense, and it is necessary that plaintiff have and obtain the immediate and exclusive use and occupation of an area consisting of separate interests as hereinafter defined, which are herein defined in the aggregate as Area 2; that it is necessary that plaintiff have such immediate use [7] and occupation of all of Area 2 at the earliest practicable date for the removal, demolition and disposal of any and all structures now located thereon (unless expressly and subsequently excepted and allowed to be removed by the owners thereof by the Secretary of the Navy or his designated appointee and agent), and for the construction, installation and establishment upon the surface of the lands in which such interests are herein to be acquired of such necessary facilities, including temporary or permanent public works as the Secretary of the Navy may consider necessary for national defense,

together with the immediate and complete evacuation and removal of all persons now occupying or using the same or any portion thereof.

That said Area 2 is more particularly described as follows, to wit . . . (Hereafter follows the legal description of the various parcels.) [8]

IX.

Terminal Island, of which the land the plaintiff intends and seeks to take, acquire, condemn, hold, and own by this proceeding constitutes a part of an artificial island located in Los Angeles Harbor, above ordinary high-water mark, created by the deposit of soil and dredged material taken from the waters of Los Angeles Harbor to improve and increase the navigability of the channel thereof, and it was not in existence as an island at the time the State of California was admitted to the Union, and the area which the island now covers was and continued to be, until the creation of the island, submerged by the navigable waters of Los Angeles Harbor.

X.

That notices to vacate said premises and terminating such rights as the defendants in this action may have therein have been personally served upon each defendant and occupant of said premises who could be found thereat, or elsewhere located, and in the event such person or persons could not be located, has been served by posting a notice thereof upon the premises and mailing a copy of such notice to the last known address of such person, said notices being given by the City of Los Angeles, through its Board of Harbor Commissioners,

and by the Commandant of the Naval Operating Base on Terminal Island for and in behalf of the Secretary of the Navy. . . . [9]

XII.

The following persons, firms and corporations are named as defendants for the reason that they claim some right, title or interest in said parcels of land, the improvements thereon, or in the Orders, leases or Revocable Permits hereinbefore set forth in this Amended Complaint and the number in parenthesis after the name of defendant refers to the parcel hereinbefore mentioned in which said defendant claims an interest, viz:

. . . Southern California Jap Fishermen's Association (290); . . . [10] . . . O'Hira, W. S. (294); . . . Mrs. Koto Yamamoto (314); . . . M. Iwasaki (326); . . . M. Seiko (338); . . . Ben Maeda (354); Mrs. Sen Tanaka (355); M. Kawasaki (356); N. Nomura (357); Y. Hama (358); . . . T. Koiso (362); . . . T. Nonoshita (366); Jim T. Hatashita (365); K. Nakamura (368); . . . T. Koiso (373-A) . .

XIII.

Plaintiff has set forth in the caption of the Complaint the names of all of the persons whom it is informed and believes have or claim to have some right, title or interest in the parcels of land hereinbefore set forth and the Orders and Permits hereinbefore set forth and referred to in Parcels numbered 1 to 387, both inclusive, affected by this proceeding or some part thereof; that individual

persons whose true names are known to plaintiff have been sued under such names. Other defendants are sued under fictitious names of One Doe to Five Hundred Doe, inclusive. Corporations or unincorporated societies are indicated as such and corporations whose names are unknown are sued under fictitious names of One Doe Corporation to Five Hundred Doe Corporation, inclusive.

XIV.

Defendant County of Los Angeles was and now is a body politic and corporate situated in the State of California within the Southern District of California and was and now is organized and existing under the laws of the State of California. Defendants City of Los Angeles and City of Long Beach are municipal corporations, duly organized and existing under the laws of the State of California, Defendants Board of Harbor Commissioners, Board of Public Works, Bureau of Power and Light, and Los Angeles City School District are politic subdivisions or agencies of the City of Los Angeles. That defendants A Doe as administrator or executor of Z Doe as administrator or executor, are sued herein under fictitious names and are either executors or administrators of estates of decedents having some interest in or claim upon said property or some part thereof. That upon ascertaining said true names of the various defendants included herein under fictitious names, plaintiff prays leave of Court to amend the Complaint and substitute

said true names in lieu of the fictitious names herein used. [12]

Wherefore, plaintiff prays judgment:

1. That the Court ascertain and assess the value of the immediate, sole and exclusive possession of the property herein sought to be taken and condemned, and of each and every separate estate or interest therein.

2. Adjudging that the public uses for which plaintiff takes and condemns said land are necessary public uses of the plaintiff, and that the uses to which said property are to be applied are uses authorized by law and are paramount to any other public use or uses to which said land, or any portion thereof, is now appropriated;

3. Determining that the title in fee simple absolute to the lands set forth and described in Parcels 1 to 277, both inclusive, are now and at all times since the 21st day of February 1942, the date of the filing of the Declaration of Taking, have been vested in the United States of America subject to existing public utility easements, if any, and also subject to and excepting any and all oil and other mineral deposits underlying the land; Provided however, that the defendants or anyone acting in their behalf shall not explore, operate, drill or remove the said oil and other mineral deposits without the express written consent or permission of the United States of America prior thereto; and provided further that in excepting such oil and other mineral deposits and rights from its declara-

tion of taking in this action, the United States does not thereby concede said ownership or said rights to be in any of the defendants, or any other third party, nor shall it be prejudiced in hereafter asserting ownership to all rights in said oil and mineral deposits lying within and appertaining to the above described property by any lawful means whatsoever.

4. Vesting in the United States of America the immediate, sole and exclusive possession of the real property hereinabove described, and adjudging that said possessory interest shall be deemed to be condemned and taken for the use of the United States for the [13] purpose and use hereinabove set forth; and further adjudging that the right to just compensation for the possessory interests in the said lands hereinabove described be vested in the persons entitled thereto as their respective interests may appear and be established by judgment herein, and a time fixed within which, and the terms upon which, the parties in possession shall be required to surrender possession to plaintiff, United States of America.

5. That all liens or encumbrances of record against the property herein sought to be taken and condemned be satisfied out of the award to be made in this proceeding.

6. For such other and further relief as the Court deems meet and proper in the premises, and as the nature of the case may require.

Dated this 16th day of March, 1942.

WM. FLEET PALMER,
United States Attorney,

IRL D. BRETT,
ALEXANDER W. STAPLES,
Special Attorneys,
Lands Division,
Department of Justice,

By A. W. STAPLES,
Attorneys for Plaintiff.

[Endorsed]: Filed March 16, 1942. [14]

[Title of District Court and Cause.]

AFFIDAVIT

State of California,
County of Los Angeles—ss.

A. L. Wirin, being first duly sworn, deposes and says:

That he is the attorney for the defendant in the above case;

That he represents ten more clients in addition to the Southern California Fisherman's Association in the above action;

That he expects to file answers for each of these ten additional clients;

That it is agreed to and understood by the respective counsel that the same basis for valuation of property as will be decided at the proceedings on the hearing in the motion to strike in the above case will apply in the case of the answers to be filed on behalf of said ten additional clients; [15]

That the respective counsel have already previously stipulated that the plaintiff's Motion to Strike from Answer of Defendant Southern California Fisherman's Association be continued to April 29, 1946, at 10 a.m.

/s/ A. L. WIRIN.

Subscribed and sworn to before me this 13th day of April, 1946.

[Seal] /s/ FRANK F. CHUNIAS,
Notary Public in and for said County and State

[Endorsed]: Filed April 15, 1946. [16]

[Title of District Court and Cause.]

STIPULATION

(Parcel No. 290)

Comes Now plaintiff, United States of America, by and through its attorneys of record, Eugene D. Williams, Special Assistant to the Attorney General, and Reuben Rosensweig, Special Attorney, Lands Division, Department of Justice, and de-

fendant, Southern California Japanese Fishermen's Association, a corporation, by and through its attorneys of record, A. L. Wirin and J. B. Tietz, and stipulate to the following items hereinafter set forth:

1. That defendant occupied Parcel No. 290 under Revocable Permit No. 31, effective January 1, 1924, a copy of which Revocable Permit No. 31 is attached hereto and made a part hereof by reference and marked Exhibit "A."

2. Notice of Revocation on the above numbered parcel, a copy of which Notice is attached hereto marked Exhibit "B" and made a part hereof by reference, was served upon defendant Southern California Fishermen's [17] Association, a corporation, on February 14, 1942, at 11:05 a.m., by leaving a copy thereof with its Secretary.

3. That the Complaint in Condemnation was filed February 21, 1942.

4. That an Order for Immediate Possession was signed by the Honorable H. A. Hollzer, Judge of the above entitled Court, on February 25, 1942.

5. That a copy of the Order for Immediate Possession was served upon defendant, Southern California Japanese Fishermen's Association, a corporation, which order provided that defendant leave Terminal Island not later than midnight of February 27, 1942.

6. That as a result of the service of the Order for Immediate Possession defendant was unable to remove its improvements.

7. That said improvements are not now in place and as a result thereof are not being used or occupied by the United States Navy.

8. That defendant continuously occupied Parcel No. 290 from January 1, 1924, to and including February 27, 1942, and that the improvements erected thereon by defendant were subsequent to the granting of defendant's Revocable Permit No. 31 by the Board of Harbor Commissioners of the City of Los Angeles and prior to the service of the Notice of Revocation, a copy of which is attached hereto.

9. That the Notice of Revocation was served upon defendant, Southern California Japanese Fishermen's Association, a corporation, by the Board of Harbor Commissioners of the City of Los Angeles at the request of the United States Navy.

10. That the City of Los Angeles claims no interest in the improvements inasmuch as the just compensation for the taking of the right, title and interest of the City of Los Angeles has already been fixed and adjudicated by Final Judgment.

11. Plaintiff and defendant each reserves its right to appeal from any ruling of this Court as to any question of law and to seek a review in all appellate courts. [18]

Note: Plaintiff makes no objection to the inclusion of Items 6 and 9 within this Stipula-

tion hereinabove set forth but plaintiff specifically denies their legal relevancy and materiality herein.

Dated May 10th, 1946.

UNITED STATES
OF AMERICA,
EUGENE D. WILLIAMS,
Special Assistant to the
Attorney General,

REUBEN ROSENSWEIG,
Special Attorney,
Lands Division,
Department of Justice,

By /s/ REUBEN ROSENSWEIG,
Attorneys for Plaintiff.

SOUTHERN CALIFORNIA
JAPANESE FISHERMEN'S
ASSOCIATION, a corporation,

A. L. WIRIN and
J. B. TIETZ,

By /s/ A. L. WIRIN,
Attorneys for Defendant.

[Endorsed]: Filed May 13, 1946. [19]

At a stated term, to wit: the September Term A. D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held

at the Court Room thereof, in the City of Los Angeles on Wednesday, the 2nd day of October, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Jacob Weinberger,
District Judge.

[Title of Cause.]

This cause coming on for trial; Reuben Rosensweig and George F. Hurley, Esqs., Special Attorneys, Lands Division, Department of Justice, appearing for the plaintiff; Fred Okrand, Esq., appearing as counsel for the defendant-owners of parcels 290, 326, 338, 354, 356, 357, 358, 362, 366, 367, 368, and three other unnumbered parcels owned by defendants H. Hamaguchi, Koto Yamamoto and Sen Tanaka, respectively:

Attorney Rosensweig moves the Court for a pre-trial hearing and determination of the rule of value which the Court would fix at the trial as to the improvements on the land, to govern the introduction of proof of the value of said improvements when the case is tried as to value. It is so ordered and counsel is directed to proceed with argument thereon.

Attorney Okrand argues thereon in behalf of the defendants and Attorney Rosensweig argues thereon in behalf of the plaintiff.

The Court states that it will adopt the decision of Judge Hollzer heretofore rendered in this action on the same point, and that the Court will rule at

the trial that the defendants are entitled only to the removal value of their improvements when the question arises during the introduction of proof of value.

It is further ordered that this cause be, and it hereby is, continued to 10 a.m., November 4, 1946, for re-setting for jury trial. [20]

At a stated term, to wit: the February Term, A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday, the 21st day of August, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Jacob Weinberger,
District Judge.

[Title of Cause.]

The Court having this date received the written report of witness Ralph M. Hults, and the clerk having filed same as a trial exhibit, designated as Joint Exhibit No. 1 in evidence, pursuant to the stipulation and order made at the trial on August 12, 1947; now therefore, pursuant to the Court's decision and order for findings and judgment made on August 12, 1947,

The Court now finds the value of Parcel 373-A to be the sum of \$1,000 and now orders the findings

and judgment to be supplemented by the incorporation therein of the said findings as to Parcel 373-A. [21]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

(As to Parcels Nos. 290, 294, 315, 326, 338, 354-358, inc., 362, 366-368 inc., and 373-A.)

This cause coming on to be heard before the Honorable Jacob Weinberger, Judge presiding, on August 12, 1947, for trial as to Parcels Nos. 290, 294, 314, 326, 338, 354, 355, 356, 357, 358, 362, 366, 367, 368 and 373-A, as the same are described in this action, plaintiff United States of America, being represented by James M. Carter, United States Attorney, and Reuben Rosensweig, Assistant United States Attorney, and George F. Hurley, Special Attorney, Lands Division, Department of Justice, and defendants hereinafter named, appearing by Wirin, Maeno & Okrand, by Fred Okrand, Esq., their attorneys, without the intervention of a jury, a jury being waived by the parties, and the said parties having stipulated and agreed in open Court that the Court could take evidence, but without prejudice to the right of either party to object to the relevancy thereof and the Court to rule thereon, (a) upon the value of the buildings and structures situated upon the property comprising the above parcels at the time of the taking thereof

by plaintiff in and by this action, then owned by defendants as removed from the land, and [22] (b) the value of said buildings and improvements as a part of the land, the Court proceeded to hear and receive the proofs of the parties and after having considered the evidence, both oral and documentary, and having heard arguments of counsel and being fully advised in the premises, makes the following

FINDINGS OF FACT

I.

That on February 21, 1942, the City of Los Angeles was the owner in fee of the real estate hereinafter described.

II.

That the defendants hereinafter named were, on and prior to February 21, 1942, in possession of the parcels hereinafter described, under Revocable Permits issued by the Board of Harbor Commissioners of the City of Los Angeles, which granted to said defendants the right to occupy and improve the property therein described under the terms hereinafter recited; that said defendants, and each of them, had been continuously in possession of their respective parcels for varying periods of time, no period of possession being for less than three (3) years; that said Revocable Permits each provided that the City could cancel the same upon giving to the occupant thereunder, notice to move therefrom after thirty (30) days from the date of such notice

and that all improvements placed upon the property by said permittees remained the property of said permittee and could be removed by such permittee at any time during the 30-day period following the service of such cancellation notice.

III.

That pursuant to such permits the hereinafter named defendants constructed upon and securely attached to the property described in said permits, buildings and structures of a substantial nature; and that said buildings and structures were the sole property of said defendants, subject, however, in cases hereinafter described, to liens of the State Board of Equalization of California for occupational license fees due under California law for the conduct of certain forms of business therein.

IV.

That on various dates, none of which was more remote than thirty [23] (30) days prior to February 21, 1942, the City of Los Angeles cancelled the Revocable Permits issued to the hereinafter named defendants, for each of the above numbered parcels; that on February 21, 1942, this action was filed in this Court and cause, and pursuant to an Order of this Court first had and obtained, the United States entered upon said parcels and each of them, took the exclusive possession thereof and of all buildings and structures thereon and removed the defendants forthwith from the premises although in no case had the 30-day period within

which said defendants could remove their buildings and structures and improvements expired.

V.

That notice of revocation of the permits was served upon defendants by the City of Los Angeles at the request of the United States Navy just prior to the filing of this suit; and these condemnation proceedings were instituted at the request of the United States Navy.

VI.

That the fair market value of the buildings and structures taken from defendants named below (a) as removed from the land, and (b) as a part of the land, is as shown in the following table:

Defendants	Parcel No.	Value as Removed from the Land	Value as a Part of the land
So. Calif. Fisherman's Assn.	290	\$1,650	\$4,800
W. S. O'Hira	294	350	1,050
Yamamoto, Koto	314	2,250	8,750
Iwasaki, M.	326	200	1,000
Seiko, Roku	338	300	1,350
Maeda, Ban (Benkiehi).....	354	600	3,000
Tanaka, Sen	355	400	1,100
Kawasaki, Miyoji	356	600	3,500
Nomura, Naga	357	350	2,700
Hama, Yosaburo	358	500	2,900
Koiso, T.	362	350	1,950
Nonoshita, T.	366	300	850
Hatashita, Jim Teizo.....	367	700	3,250
Nakamura, K.	368	500	1,400
Koiso, T.	373-A	1,000	1,650

CONCLUSIONS OF LAW

I.

That the defendants named in Findings of Fact VI, were the lawful owners of the buildings and

structures situate upon each of the hereinabove numbered parcels on February 21, 1942, when the United States took possession thereof and removed the said owners from said parcels and that said defendants are the only persons entitled to receive the award of compensation for the condemnation and taking of said buildings and structures by plaintiff, except as hereinafter noted.

II.

That the buildings and structures were of such construction that had they been constructed by the owner of the fee they would have been a part of the real property.

III.

That the legal effect of the Revocable Permits was to create a tenancy at the will of the owner City of Los Angeles in each parcel above identified, but subject to a 30-day occupancy after termination for the purpose of removing all buildings and structures and property of the tenant therefrom; that the legal effect of the notice of cancellation given by the City of Los Angeles to the permittees thereon was to terminate the tenancy at will and to create a tenancy for thirty (30) days for the purpose of removal as aforesaid and that the legal effect of the condemnation and taking of the interests of the defendants was to condemn and take the unexpired balance of said 30-day term and all of the buildings and structures of defendants

situate upon said property and that the defendants are entitled to just compensation therefor. [25]

IV.

That the unexpired balance of the 30-day term condemned and taken by the United States, had no value and that the defendants are not entitled to compensation therefor.

V.

That the proper measure of evaluating the buildings and structures for the purpose of determining and fixing the just compensation to be paid to the defendants, as the former owners, for the condemnation and taking thereof, is their value as removed from the land and that the said defendants are, therefore, entitled to judgment of an award of just compensation equal to the value of the said buildings and structures on February 21, 1942, as they would have been worth to said owners if they had been able to remove them from the land, less whatever amounts may be due on the liens of the State Board of Equalization of California as the same may be proved by the said Board upon distribution proceedings subsequent to entry of Judgment, which liens are claims to the award, paramount and superior to the rights of defend-

ants to receive the same when so established to exist against any of the defendants.

Dated this 9th day of April, 1948.

/s/ JACOB WEINBERGER,
United States District Judge.

Approved as to Form and Substance:

UNITED STATES
OF AMERICA,

JAMES M. CARTER,
United States Attorney,

GEORGE F. HURLEY,
Special Attorney,
Lands Division,
Department of Justice,

By /s/ GEORGE F. HURLEY,
Attorneys for Plaintiff.

Approved as to Form but not as to Substance:

WIRIN, MAENO & OKRAND,

By /s/ FRED OKRAND,
Attorneys for Defendants.

[Endorsed]: Filed April 13, 1948. [26]

In the District Court of the United States in and
for the Southern District of California, Central
Division

No. 2078-W Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

40 ACRES OF LAND IN LOS ANGELES
COUNTY, et al.,

Defendants.

JUDGMENT AND DECREE IN
CONDEMNATION

(As to Parcels Nos. 290, 294, 315, 326, 338, 354-
358 inc., 362, 366-368 inc., and 373-A.)

The above entitled cause having come on for trial on August 12, 1947, plaintiff United States of America being represented by James M. Carter, United States Attorney, and George F. Hurley, Special Attorney, Lands Division, Department of Justice, and Wirin, Maeno & Okrand, by Fred Okrand, Esq., representing the defendants who are the parties interested in the hereinafter described property, and the Court having heard and received both oral and documentary evidence and made its Findings of Fact and Conclusions of Law which have been filed by the Court in this action, the Court now renders Judgment as follows:

I.

That just compensation for the condemnation and taking by the United States of the buildings and structures located upon the following parcels as the same are described in this action, is as follows: [27]

Parcel No.	Just Compensation
290	\$1,650
294	350
314	2,250
326	200
338	300
354	600
355	400
356	600
357	350
358	500
362	350
366	300
367	700
368	500
373-A	1,000

II.

That the following named defendants each being the owner of the parcel, the number of which is set opposite his name, have Judgment against the United States in the amount set out below:

Parcel No.	Owner	Amt. of Judgment
290	So. Calif. Fisherman's Assn.....	\$1,650
294	W. S. O'Hira	350
314	Yamamoto, Koto	2,250
326	Iwasaki, M.	200

Parcel No.	Owner	Amt. of Judgment
338	Seiko, Roku	300
354	Maeda, Ben (Benkichi).....	600
355	Tanaka, Sen	400
356	Kawasaki, Miyoji	600
357	Nomura, Naga	350
358	Hama, Yosaburo	500
362	Koiso, T.	350
366	Nonoshita, T.	300
367	Hatashita, Jim Teizo.....	700
368	Nakamura, K.	800
373-A	Koiso, To.	1,000

less whatever amounts may be due to the liens of the State Board of Equalization of California as the same may be proved by the said Board upon distribution proceedings subsequent to entry of this Judgment, which liens are claims to the award, paramount and superior to the rights of defendants to receive the same when so established to exist against any of the defendants.

III.

That with respect to the above numbered parcels, deficiencies exist resulting from the fact that the Judgment herein awarded is greater than the amount on deposit in the registry of this Court to pay the same. With respect to each such parcel, plaintiff shall forthwith deposit in the registry of this Court an amount sufficient to supply the deficiency, together with interest upon the amount of such deficiency at the rate of six (6%) per cent per annum from February 21, 1942, to the date of such deposit and defendants, being the owners of said parcels, shall have Judgment for interest upon such deficiency at six (6%) per cent per annum as aforesaid, and the amount now on deposit with re-

spect to such parcels and such defendants, shall forthwith be paid to them in partial satisfaction of this Judgment, less any amount that may be due on the liens of the State Board of Equalization of California as the same may be proved by the said Board upon distribution proceedings subsequent to entry of this Judgment, which liens are claims to the award, paramount and superior to the rights of defendants to receive the same when so established to exist against any of the defendants.

Dated this 13th day of April, 1948.

/s/ JACOB WEINBERGER,
United States District Judge.

Presented by:

JAMES M. CARTER,
United States Attorney,

GEORGE F. HURLEY,
Special Attorney,
Lands Division,
Department of Justice,

By /s/ GEORGE F. HURLEY,
Attorneys for Plaintiff.

Judgment entered April 13, 1948. Docketed April 13, 1948. Book 50, Page 160, Edmund L. Smith, Clerk, by L. B. Figg, Deputy.

[Endorsed]: Filed April 13, 1948. [29]

[Title of District Court and Cause.]

NOTICE OF APPEAL

(As to Parcels Nos. 290, 294, 315, 326, 338, 354-358 inc., 362, 366-368 inc., and 373-A.)

Notice Is Hereby Given that Southern California Fisherman's Association, W. S. O'Hira, Koto Yamamoto, M. Iwasaki, Roku Seiko, Ben (Benkichi) Maeda, Sen Tanaka, Miyoji Kawasaki, Naga Nomura, Yosaburo Hama, T. Koiso, T. Nonoshita, Jim Teizo Hatashita, and K. Nakamura, defendants above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 13, 1948.

Dated this 22nd day of May, 1948.

A. L. WIRIN and
FRED OKRAND,

By /s/ FRED OKRAND,

Attorneys for Defendants and Appellants Southern California Fisherman's Assn., W. S. O'Hira, Koto Yamamoto, M. Iwasaki, Roku Seiko, Ben (Benkichi) Maeda, Sen Tanaka, Miyoji Yawasaki, Naga Nomura, Yosabura Hama, T. Koiso, T. Nonoshita, Jim Teizo Hatashita, K. Nakamura.

(Acknowledgment of service by mail attached.)

[Endorsed]: Filed May 24, 1948. [31]

[Title of District Court and Cause.]

STIPULATION RE DESIGNATION OF RECORD ON APPEAL AND PRAECIPE

(As to Parcels Nos. 290, 294, 315, 326, 338, 354-358 inc., 362, 366-368 inc., and 373-A.)

It Is Hereby Stipulated, pursuant to Rule 75(f), Federal Rules of Civil Procedure, between the attorneys for the parties in the above entitled action that the following shall be the record on appeal, and the Clerk is requested to prepare and certify the same to the Circuit Court of Appeals for the Ninth Circuit:

1. Complaint, abridged in accordance with Rule 75(e), Federal Rules of Civil Procedure, as per attached copy.
2. Affidavit of A. L. Wirin, filed April 15, 1946.
3. Stipulation filed May 13, 1946.
4. Order of Hon. Jacob Weinberger of October 2, 1946.
5. Order of Hon. Jacob Weinberger of August 21, 1947.
6. Findings of fact and conclusions of law filed April 13, 1948. [33]
7. Judgment and decree filed April 13, 1948.
8. Notice of appeal.
9. This stipulation and praecipe.

It Is Further Stipulated that the original of Ex-

hibit 1, filed on August 21, 1947, be transmitted and certified to the Appellate Court.

Dated this 21st day of May, 1948.

A. L. WIRIN and
FRED OKRAND,

By /s/ FRED OKRAND,

Attorneys for Defendants and Appellants Southern California Fisherman's Assn., W. S. O'Hira, Koto Yamamoto, M. Iwasaki, Roku Seiko, Ben (Benkichi) Maeda, Sen Tanaka, Miyoji Kawasaki, Naga Nomura, Yosaburo Hama, T. Koiso, T. Nonoshita, Jim Heizo Hatashita, K. Nakamura.

JAMES M. CARTER,

U. S. Attorney,

GEORGE F. HURLEY,

Special Attorney,

Lands Division,

Department of Justice,

By /s/ GEORGE F. HURLEY,

Attorneys for Plaintiff and Appellee.

It is ordered that the Clerk shall transmit original of Exhibit No. 1 to the Appellate Court.

Dated May 24, 1948.

JACOB WEINBERGER,

Judge.

Note: The amended complaint attached hereto appears at page 2 of the certified transcript so is not repeated at this point.

[Endorsed]: Filed May 24, 1948. [34]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 34, inclusive, contain full, true and correct copies of a portion of the Amended Complaint; Affidavit of A. L. Wirin · Stipulation re Parcel No. 290; Minute Orders entered October 2, 1946, and August 21, 1947; Findings of Fact and Conclusions of Law; Judgment and Decree in Condemnation; Notice of Appeal and Stipulation and Order re Designation of Record on Appeal which, together with original Joint Exhibit No. 1, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing comparing, correcting and certifying the foregoing record amount to \$7.80 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 14th day of June, A. D. 1948.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

JOINT EXHIBIT No. 1

Ralph M. Hults
100 Club Road, Pasadena, California
Ryan 1-6880
Member American Institute of Real Estate
Appraisers

August 19, 1947

The Honorable Jacob Weinberger
U. S. District Judge
Post Office Building
Los Angeles 12, California

Re: U. S. vs. 40 acres of land, City of Los Angeles, County of Los Angeles et al., No. 2078-W, Parcels 290, 294, 314, 326, 338, 354, 355, 356, 357, 358, 362, 366, 367, 368, and 373-A.

Dear Judge Weinberger:

Pursuant to your request I submit herewith in duplicate the findings from appraisal reports submitted by me to the Lands Division, U. S. Department of Justice, in which was expressed an opinion of the fair market value and of the removal or salvage value of the improvements located on the above-numbered parcels as of February 21, 1942.

PARCEL No. 290

Owner of Improvements: Southern California Japanese Fishermen's Association.

* * * *

Lease: Revocable Permit No. 31—effective January 1, 1924.

Joint Exhibit No. 1—(Continued)

Terms: 30 days.

Area of Land: 13,000 square feet.

Ground Rental: \$50.00 per month.

Street Address: 243 Terminal Way.

Assessed Value of Improvements: \$880.

Valuation of Improvements in Place: \$4,800.

Removal or Salvage Value of Improvements:
\$1,650.

Description of Improvements: The improvements on this parcel consist of a frame hall, a frame cottage, a frame garage, a shed, and a toilet building.

Association Hall

Exterior construction—lap siding, with cheap composition roof in good condition, and cement foundation.

Interior finish—4 rooms, 2 toilets, and a small mezzanine room for a motion picture projector. Walls are board and batt 4 feet high; balance of wall and ceilings are tongue and groove siding. Large room has maple floor; balance of floors are 1 by 4-inch tongue and groove. Toilet rooms have plywood walls and ceilings and cement floor.

One toilet room has a low-tank toilet and a wall lavatory, and the other has 2 low-tank toilets and a wall lavatory.

One room, 12 by 32 feet, has unfinished walls and ceiling and 1 by 4-inch tongue and groove floor.

Area: 4,198 square feet.

Condition: Good.

Age: 25 years.

Joint Exhibit No. 1—(Continued)

Frame Cottage

Exterior construction—6-inch lap siding, composition roof, and woodsill foundation.

Interior—6 rooms—beaded tongue and groove walls and ceilings, 1 by 4-inch tongue and groove floors. Porcelain sink and wooden drainboard. Three fixtures in the bath—Essex tub, wall lavatory, low-tank toilet.

Area: 1,168 square feet.

Age: 22 years.

Condition: Good.

Frame Garage

Constructed of boards and batts, with tar paper roof, and board floor.

Area: 186 square feet.

Frame Shed

Constructed of lap siding, with composition roof and woodsill foundation. 1 by 6-inch Oregon pine floor.

Area: 65 square feet.

Toilet Building

Constructed of lap siding, with composition roof and cement foundation, containing 4 low-tank toilets.

Area: 125 square feet.

PARCEL No. 294

Owner of Improvements: W. S. O'Hira.

* * * *

Lease: Revocable Permit No. 48—effective February 18, 1925.

Joint Exhibit No. 1—(Continued)

Term: 30 days.

Area of Land: 795 square feet.

Ground Rental: \$10.00 per month.

Street Address: 502 South Seaside Avenue.

Assessed Value of Improvements: \$200.

Value of Improvements in Place: \$1,050.

Removal or Salvage Value of Improvements:
\$350.

Description of Improvements:

Frame Office Building

Exterior construction—novelty siding, with sheet composition roof, and woodsill foundation on cement piers.

Interior—consists of 4 rooms—plastered walls and ceilings, and Oregon pine and linoleum floors.

Two porcelain sinks with wooden drainboards.
Low-tank toilet.

Area: 682 square feet.

Age: 17 years.

Condition: Fairly good.

PARCEL No. 314

Owner of Improvements: Mrs. Koto Yamamoto.

* * * *

Lease: Revocable Permit No. 243—effective April 1, 1932.

Term: 30 days.

Area of Land: 10,000 square feet.

Ground Rental: \$65.00 per month.

Joint Exhibit No. 1—(Continued)

Street Address: 248, 248½, 250, 250½, 252, 252½ Terminal Way, and 213 Ways Street, 254 Terminal Way.

Assessed Value of Improvements: \$1,100.

Valuation of Improvements in Place: \$8,750.

Removal or Salvage Value of Improvements: \$2,250.

Description of Improvements: The improvements on this parcel consist of a single frame house, three double frame houses, a corrugated iron bunk house and frame garage.

Single House

Exterior construction—lap siding, wood shingle roof and cement foundation.

Interior finish—5 rooms, bath and service porch. Living and dining rooms have plastered walls and ceilings with walls papered.

Kitchen has beaded tongue and groove walls and ceiling.

Two bedrooms plasterboard and battens walls and ceilings.

One bedroom plasterboard walls and beaded tongue and groove ceiling.

Kitchen has enamel sink and tile drainboard, hot water heater.

Bath has three fixtures, Essex tub, wall lavatory and low-tank toilet.

Double laundry tray on screened porch.

Wiring in conduit, lighting fixtures fairly good.

Joint Exhibit No. 1—(Continued)

Age: 19 years.

Area: 1,040 square feet.

Condition: Fairly good.

Three Double Houses

Exterior construction—lap siding, sheet composition roofs, woodsill foundation.

Interior finish—beaded tongue and groove walls and ceilings (double construction), 1 by 4 tongue and groove floors.

The three double houses contained the following: 19 rooms, 6 baths, 4 service porches, 6 enamel sinks and wooden drainboards, 6 hot water heaters, 6 Essex tubs, 6 low-tank toilets, 6 wall lavatories.

Wiring in conduit, drop cords only.

Age: 17 years.

Area: 3,094 square feet.

Condition: Fairly good.

Corrugated Iron Bunk House

Exterior construction—frame with corrugated iron sides and roof, with the exception of a 10 by 16-foot addition on the west, which has 6-inch siding with sheet composition roof, woodsill foundation.

Interior finish—seven rooms, six on first floor and one dormer type room upstairs.

1 by 4 tongue and groove walls, novelty type beaded tongue and groove ceilings, with the exception of two rooms, which have three walls and ceilings of plyboard. Floors 1 by 10 and 1 by 12 Oregon pine.

Two enamel sinks.

Joint Exhibit No. 1—(Continued)

Bath has cement floor, low-tank toilet and Essex tub. Laundry tray in small room.

Dormer type room upstairs unfinished except for flooring.

Wiring in conduit—drop cords only.

Age: 19 years.

Area: 1,030 square feet.

Condition: Good.

Single Garage

Constructed of lap siding, tar paper roof and dirt floor.

Age: 12 years.

Area: 188 square feet.

Condition: Good.

PARCEL No. 326

Owner of Improvements: M. Iwasaki.

* * * *

Lease: Revocable Permit No. 140—effective July 1, 1929.

Term: 30 days.

Area of Land: 1,250 square feet.

Ground Rental: \$15.63 per month.

Street Address: 617 Tuna Street.

Assessed Value of Improvements: \$140.

Valuation of Improvements in Place: \$1,000.

Removal or Salvage Value of Improvements: \$200.

Description of Improvements: The improvements on this parcel consist of a one-story frame store building with living quarters in the rear.

Joint Exhibit No. 1—(Continued)

Exterior construction—lap siding with low pitch composition roof, brick foundation and glass front in the store.

Interior finish—beaded tongue and groove walls and ceilings (single construction) and 1 by 4-inch tongue and groove floors, linoleum covered. Wiring in conduit, drop cords only—no fixtures.

Front room—barber shop—had two wall lavatories and two cupboards.

Living quarters—four rooms and bath—beaded tongue and groove walls and ceilings, 1 by 4-inch tongue and groove floors, with cement floor in bathroom. Bath had galvanized iron oval tub, one laundry tray and low-tank toilet.

Age: 24 years.

Area: 955 square feet.

Condition: Fairly good.

PARCEL No. 338

Owner of Improvements: M. Seiko.

* * * *

Lease: Revocable Permit No. 161—effective May 1, 1930.

Term: 30 days.

Area of Land: 915 square feet.

Ground Rental: \$20.00 per month.

Street Address: 618 South Seaside Avenue.

Assessed Value of Improvements: \$110.

Valuation of Improvements in Place: \$1,350.

Removal or Salvage Value of Improvements: \$300.

Joint Exhibit No. 1—(Continued)

Description of Improvements: The improvements on this parcel consist of a two-story frame building.

Exterior construction—novelty siding, composition roof and cement foundation.

Interior finish—containing seven rooms and two baths—2 rooms and toilet downstairs and 5 rooms and bath upstairs.

One small room utilized as barber shop has beaded tongue and groove walls and ceiling, tongue and groove floor linoleum covered, also wall lavatory.

One room has plasterboard walls and beaded tongue and groove ceiling, 1 by 4-inch tongue and groove floor, high-tank toilet and wall lavatory.

Five rooms upstairs—plasterboard walls and ceilings (double construction) with three partitions of beaded tongue and groove. Oregon pine floors linoleum covered.

Enamel sink and wooden drainboard in one room. Bathroom has oval galvanized iron bath tub and high-tank toilet.

Wiring in conduit, drop cords only.

Stairway on outside of the building.

Age: 24 years.

Area: 1,647 square feet.

Condition: Poor. The building has been patched up and there is considerable evidence of dry rot.

PARCEL No. 354

Owner of Improvements: Ben Maeda.

* * * *

Lease: Revocable Permit No. 451—effective October 1, 1938.

Joint Exhibit No. 1—(Continued)

Term: 30 days

Area of Land: 1,200 square feet.

Ground Rental: \$18.00 per month.

Street Address: 721 Tuna Street.

Assessed Value of Improvements: \$630.

Valuation of Improvements in Place: \$3,000.

Removal or Salvage Value of Improvements:
\$600.

Description of Improvements: This parcel is improved with a two-story frame building with a stucco front.

Exterior construction—sides and front are of lap siding, front wall is of stucco; medium pitch sheet composition roof in good condition, and cement foundation.

Interior—consists of one large and three small rooms, toilet and lavatory. Interior stucco on the walls and ceiling; floor is cement, linoleum covered.

Good low-tank toilet and wall lavatory in the bathroom. Double galvanized iron sink and drain-board and another large enamel sink and tile drain-board. Large Wellsbach Hot Zone hot water heater.

Upstairs consists of six rooms and bath. Plaster-board walls and ceiling in half of the hall and in two rooms. Balance of the hall and other four rooms have beaded tongue and groove walls and ceilings. Floors are 1 by 4-inch tongue and groove Oregon pine, linoleum covered.

Bathroom has tile floor, plaster walls and ceiling, standard bath tub, low-tank toilet, and heavy wall lavatory.

Joint Exhibit No. 1—(Continued)

Area: First floor, 1,166 square feet; second floor, 937 square feet; total area, 2,103 square feet.

Age: 22 years; additions in 1930 and 1935.

Condition: Good.

PARCEL No. 355

Owner of Improvements: Mrs. Sen Tanaka.

* * * *

Lease: Revocable Permit No. 408—effective October 26, 1936.

Term: 30 days.

Area of Land: 1,000 square feet.

Ground Rental: \$12.50 per month.

Street Address: 729 Tuna Street.

Assessed Value of Improvements: \$140.

Valuation of Improvements in Place: \$1,100.

Removal or Salvage Value of Improvements: \$400.

Description of Improvements: This parcel is improved with a frame one-story building.

Exterior construction—lap siding, medium pitch tar paper roof in poor condition, and cement foundation.

Interior—consists of four rooms. Walls and ceilings are beaded tongue and groove; 1 by 4-inch tongue and groove floors. The two rear rooms are on a level 2 feet higher than the two front rooms.

There is an enamel sink and a wooden drain-board, also a high-tank toilet and a wall lavatory.

Joint Exhibit No. 1—(Continued)

Additional wall lavatory and galvanized hot water heater in another room.

Age: 19 years.

Area: 873 square feet.

Condition: Fairly good, excepting the roof, which is poor.

PARCEL No. 356

Owner of Improvements: M. Kawasaki.

* * * *

Lease: Revocable Permit No. 435—effective October 1, 1937.

Term: 30 days.

Area of Land: 1,600 square feet.

Ground Rental: \$20.00 per month.

Street Address: 737 Tuna Street.

Assessed Value of Improvements: \$560.

Valuation of Improvements in Place: \$3,500.

Removal or Salvage Value of Improvements: \$600.

Description of Improvements: This parcel is improved with a two-story frame building.

Exterior construction—lap siding, medium pitch composition roof in good condition, and cement foundation.

Interior: The downstairs contains two rooms; walls and ceilings are beaded tongue and groove and floors are 1 by 4-inch tongue and groove. There is a low-tank toilet and a corner wall lavatory in one of the rooms.

Upstairs contains seven rooms, a bathroom, and

Joint Exhibit No. 1—(Continued)

a laundry room. Walls and ceilings are beaded tongue and groove, and floors are 1 by 4-inch tongue and groove, with linoleum in two rooms, and carpeting in the remainder. Bathroom has cement floor.

Bathroom has low-tank toilet, corner wall lavatory, and galvanized iron bath tub. There is also an extra toilet room, with cement floor, which has a low wooden tank toilet.

Laundry room has a cast cement laundry tray and a galvanized iron hot water heater.

Age: 21 years; front was remodeled in 1937.

Area: First floor, 1,488 square feet; second floor, 1,373 square feet; total area, 2,861 square feet.

Condition: Good for age.

PARCEL No. 357

Owner of Improvements: N. Nomura.

* * * *

Lease: Revocable Permit No. 353—effective February 24, 1935.

Term: 30 days.

Area of Land: 1,200 square feet.

Ground Rental: \$20.00 per month.

Street Address: 743 Tuna Street.

Assessed Value of Improvements: \$370.

Valuation of Improvements in Place: \$2,700.

Removal or Salvage Value of Improvements: \$350.

Description of Improvements: This parcel is im-

Joint Exhibit No. 1—(Continued)

proved with a two-story frame building with a store on the first floor and living quarters above.

Exterior Construction: Lap siding, with medium pitch tar paper roof in poor condition, and cement floor.

Interior: The first floor consists of one room and a toilet room; walls and ceilings are plasterboard and batts; floor is cement.

There is a double galvanized iron sink and drain-board, all in one piece. Toilet room contains low-tank toilet and wall lavatory.

The upstairs contains five rooms and a bath. Walls and ceilings are plasterboard, and floors are tongue and groove, linoleum covered. Floor in the bathroom is cement.

Bathroom has a low-tank toilet, standard bath tub; there is a 30-gallon hot water heater on the rear porch.

Area: First floor, 894 square feet; second floor, 696 square feet; total area, 1,590 square feet.

Age: 13 years.

Condition: Good.

PARCEL No. 358

Owner of Improvements: Y. Hama.

* * * *

Lease: Revocable Permit No. 449—effective October 2, 1938.

Term: 30 days.

Area of Land: 1,600 square feet.

Joint Exhibit No. 1—(Continued)

Ground Rental: \$20.00 per month.

Street Address: 749 Tuna Street.

Assessed Value of Improvements: \$410.

Valuation of Improvements in Place: \$2,900.

Removal or Salvage Value of Improvements: \$500.

Description of Improvements: This parcel is improved with a two-story frame building with a mezzanine floor.

Exterior construction—lap siding, composition roof, and cement floor.

Interior: There are two rooms on the ground floor, and a toilet and wall lavatory. Walls and ceilings are beaded tongue and groove; floor in one room is 1 by 4-inch tongue and groove; the other room has cement floor. There is eleven feet of partitioned shelving 10 feet high, for nails, etc. (Building was being utilized as a hardware store.)

There is a toilet and a wall lavatory in a separate room which has a cement floor.

Building has a mezzanine, containing 922 square feet, divided into two rooms. Walls and ceilings are beaded tongue and groove; floors are 1 by 4-inch tongue and groove. There is about 30 feet of shelving in the mezzanine.

Living quarters in the rear upstairs consist of four rooms and a bath. Walls and ceilings are plasterboard; floors are 1 by 4-inch tongue and groove, linoleum covered, with exception of that in the bathroom, which is cement.

Joint Exhibit No. 1—(Continued)

Bathroom has three fixtures—low-tank toilet, bath tub, and corner wall lavatory. There is an enamel sink and a wooden drainboard and galvanized iron hot water heater in the kitchen.

Area: First floor, 1,566 square feet; second floor, 650 square feet; mezzanine, 922 square feet; total area, 3,138 square feet.

Average Age: About 16 years.

Condition: Fair.

PARCEL No. 362

Owner of Improvements: T. Koiso.

* * * * *

Lease: Revocable Permit No. 450—effective October 1, 1938.

Term: 30 days.

Area of Land: 800 square feet.

Ground Rental: \$10.00 per month.

Street Address: 779 Tuna Street.

Assessed Value of Improvements: \$230.

Valuation of Improvements in Place: \$1,950.

Removal or Salvage Value of Improvements: \$350.

Description of Improvements: This parcel is improved with a two-story frame and corrugated iron building, having a store on the first floor and living quarters above.

Exterior Construction: The front wall of the building is frame, and the sides and rear wall are corrugated iron; composition roof and cement foundation.

Joint Exhibit No. 1—(Continued)

Interior: The first floor contains two rooms; walls and ceilings are beaded tongue and groove, and floors are 1 by 4-inch tongue and groove.

There is cheap shelving 7 feet high on three sides of the main room. One room contains an enamel sink and a wooden drainboard.

The second story contains five rooms and a bath; walls and ceilings are beaded tongue and groove, and floors are 1 by 4-inch tongue and groove with fair linoleum in three rooms. One room contains an enamel sink and wooden drainboard.

There is a low-tank toilet in a separate room, which has a cement floor. There is also a hot water heater and a cast laundry tray on a service porch which has a cement floor.

Average Age: 20 years.

Area: First floor, 759 square feet; second floor, 697 square feet; total area, 1,456 square feet.

Condition: Fair.

PARCEL No. 366

Owner of Improvements: T. Nonoshita.

* * * *

Lease: Revocable Permit No. 357—effective February 1, 1935.

Term: 30 days.

Area of Land: 1,200 square feet.

Ground Rental: \$15.00 per month.

Street Address: 718 Tuna Street.

Assessed Value of Improvements: \$140.

Joint Exhibit No. 1—(Continued)

Valuation of Improvements in Place: \$850.

Removal or Salvage Value of Improvements:
\$300.

Description of Improvements: This parcel is improved with a one-story frame store building.

Exterior Construction: Lap siding, fairly new composition roof, and cement foundation.

Interior: This building contains four rooms. The front room, 20 by 30 feet, has beaded tongue and groove walls and ceiling, and cement floor. There is a counter and seven stools in this room.

The three rear rooms are on an elevation 18 inches higher than the front room, and have beaded tongue and groove walls and ceilings, and 1 by 4-inch tongue and groove floors. The floor in one room is linoleum covered.

Bathroom contains a tub and low-tank toilet. There is also a large galvanized iron sink and a galvanized iron hot water heater in one room.

Area: 1,006 square feet.

Age: 22 years; alterations in 1930.

Condition: Poor to fair.

PARCEL No. 367

Owner of Improvements: Jim T. Hatashita.

* * * *

Lease: Revocable Permit No. 402—effective July 1, 1936.

Term: 30 days.

Area of Land: 1,800 square feet.

Joint Exhibit No. 1—(Continued)

Ground Rental: \$22.50 per month.

Street Address: 726-30 Tuna Street.

Assessed Value of Improvements: \$980.

Valuation of Improvements in Place: \$3,250.

Removal or Salvage Value of Improvements: \$700.

Description of Improvements: This parcel is improved with a part one-story and part two-story frame building with a stucco front.

Exterior construction: Frame lap siding on the side and rear walls of the first floor; stucco front, and portion of side walls on the second story are stucco. Low pitch tar paper roof in fair condition; cement foundation.

Interior: The first floor has four rooms; one large room has plasterboard walls and ceiling and 1 by 4-inch tongue and groove floors. One small room has plyboard walls and ceiling and pine floor, linoleum covered. Two rear rooms have beaded tongue and groove walls and ceiling with Oregon pine and linoleum floor.

There is an enamel sink in one room and a toilet, wall lavatory, and hot water heater in another room.

The second story contains three rooms, bath, and toilet. Walls and ceilings are plyboard, and floors are 1 by 4-inch tongue and groove.

Bathroom has galvanized iron bath tub and a wall lavatory. There is a low-tank toilet in a sep-

Joint Exhibit No. 1—(Continued)

arate room. Another room contains an enamel sink and a wooden drainboard.

Area: First story, 1,752; second story, 550; total area, 2,302.

Age: 25 years; remodeled in 1922, 1925, 1929, 1939, 1940, and 1941.

Condition: Fairly good.

PARCEL No. 368

Owner of Improvements: K. Nakamura.

* * * *

Lease: Revocable Permit No. 27—effective February 1, 1924.

Term: 30 days.

Area of Land: 1,400 square feet.

Ground Rental: \$17.50 per month.

Street Address: 732-34 Tuna Street.

Assessed Value of Improvements: \$180.

Valuation of Improvements in Place: \$1,400.

Removal or Salvange Value of Improvements: \$500.

Description of Improvements: This parcel is improved with a one-story frame store building.

Exterior Construction: Lap siding with flat composition roof and cement foundation.

Interior: Contains six rooms and a bath. The front portion is utilized as a cafe, and the rear portion as living quarters. Walls and ceilings are beaded tongue and groove; floors are Oregon pine covered with good linoleum.

Joint Exhibit No. 1—(Continued)

Bathroom has cement floor; large galvanized iron bath tub and a high-tank toilet. There is an enamel sink and a galvanized iron hot water heater in the rear portion.

Area: 1,069 square feet.

Age: 19 years; addition in 1925.

Condition: Good.

PARCEL No. 373-A

Owner of Improvements: T. Koiso.

Lease: Revocable Permit No. 378.

Term: 30 days.

Area of Land: 2,240 square feet.

Ground Rental: \$28.00 per month.

Street Address: 262 Cannery Street.

Assessed Value of Improvements: \$380.

Valuation of Improvements in Place: \$2,100.

Removal or Salvage Value of Improvements:
\$1,000.

Description of Improvements: The improvements consist of a frame bungalow and a frame combination garage and store building.

Frame Bungalow

Exterior Construction: 5-room frame house, with composition roof, and woodsill foundation.

Interior Finish: Plywood walls and ceilings, Oregon pine floors. Kitchen has an enamel sink and wood drainboard; bathroom contains small bath tub, laundry tray, toilet, and lavatory.

Age: Estimated at 20 years.

Joint Exhibit No. 1—(Continued)

Area: 1,021 square feet.

Condition: Fairly good.

Combination Garage and Store Building

Frame construction, corrugated iron clad; unfinished inside.

Area of Garage: 442 square feet.

Condition: Fairly good.

The opinions herein expressed are based on a personal inspection of each of the improvements and of the environing factors, with the exception of the improvements on Parcel No. 373-A. The improvements on that parcel were measured by my employees, but the buildings were removed before I had viewed the interiors, and the information as to the interior finish was therefore obtained from individuals whom I consider to be reliable.

Respectfully submitted,

/s/ RALPH M. HULTS,
M. A. I.

[Endorsed]: Filed Aug. 21, 1947.

[Endorsed]: No. 11956. United States Circuit Court of Appeals for the Ninth Circuit. Southern California Fisherman's Association, W. S. O'Hira, Koto Yamamoto, M. Iwasaki, Roki Seiko, Ben (Benkichichi) Maeda, Sen Tanaka, Mijoji Kawasaki, Naga Nomura, Yosaburo Hama, T. Koiso, T. Nonoshita, Jim Teizo Hatashita and K. Nakamura, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 15, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11956

SOUTHERN CALIFORNIA JAPANESE FISH-
ERMEN'S ASSOCIATION, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL

Pursuant to Rule 19(6), Rules of Practice of this court, appellants herewith file their statement of points on which they intend to rely on appeal:

(1) The Trial Court erred in adopting the theory

of evaluation as the value of the property as removed from land.

(2) The property should have been evaluated on the theory of the "whole" and appellants awarded compensation for their property as a part of the land.

Dated this 28th day of July, 1948.

A. L. WIRIN and
FRED OKRAND,

By /s/ FRED OKRAND,
Attorneys for Appellants.

[Affidavit of service attached.]

[Endorsed]: Filed July 29, 1948. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD FOR PRINTING

To the Clerk of the Above Entitled Court:

Pursuant to Rule 19(6) of the rules of this Court, appellants hereby designate as the parts of the record they think necessary for the consideration of the appeal and the points upon which they intend to rely the following:

All of the record as certified to this Court by the Clerk of the District Court, saving and except the legal descriptions of the parcels of land set forth in Joint Exhibit "I."

A. L. WIRIN and
FRED OKRAND,

By /s/ FRED OKRAND,
Attorneys for Appellants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed July 29, 1948. Paul P. O'Brien, Clerk.

In the District Court of the United States, Southern
District of California, Central Division

No. 2078-H—Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

40 ACRES OF LAND, MORE OR LESS, IN THE
COUNTY OF LOS ANGELES, State of Cali-
fornia, et al.,

Defendants.

ANSWER OF SOUTHERN CALIFORNIA JAP-
ANESE FISHERMEN'S ASSOCIATION, A
CORPORATION DEFENDANT

Comes now the Southern California Japanese Fishermen's Association, a corporation, organized and existing under and by virtue of the laws of the State of California, and for Answer to the Amended Complaint in the above-entitled action, so far as said complaint affects said defendant, alleges:

I.

That it is the owner of Parcel 290 as set forth and described in said Amended Complaint.

That the defendant occupied and used said parcel under a permit with the Board of Harbor Commissioners, effective commencing January 1, 1924, at a monthly rental of \$50.00; that under said permit the defendant had the right to use said property for the erection of certain buildings; and pursuant to said permit said defendant entered possession of said property and improved the same with build-

ings as follows: Two buildings, one a wood one-story [1*] building, approximately 36' x 100' in size, containing a meeting hall and two rooms and a kitchen; the other a frame building approximately 36' x 85', having seven rooms and used as a residence and office.

II.

On the 25th day of February, 1942, the plaintiff herein, by notices in writing, required the said defendant, by virtue of an Order made in this Court, demanded the immediate exclusive possession of said property and required that said defendant and all occupants of said premises vacate, leave and remove from said premises and the whole of such described area, not later than midnight on Friday, February 27, 1942, Pacific war time, and further notified said defendant that said property included all buildings and improvements and that said defendant should not remove any part or portion of any of said improvements.

III.

That at once, upon the service of said notice, the entire property known as Terminal Island was closed and that said defendant was excluded from said island and improvements on the property hereinbefore described, and that said defendant has never, since the service of said notice on the 25th day of February, 1942, been allowed the privilege of removing its improvements.

* Page numbering appearing at foot of page of original certified Transcript of Record.

IV.

This defendant is informed and believes, and on such information and belief charges the face to be that said improvements remain on said premises and that the plaintiff through the Navy Department is in possession of said premises and has been since defendant was excluded therefrom, actively using said improvements for its own use and benefit to the exclusion of said defendant.

V.

That notwithstanding the privilege granted by the said permit issued by the Harbor Commission that said defendant was [2] accorded a right to 30 days after notice of cancellation to remove said buildings, the defendant, by reason of taking possession thereof by said Navy Department, was unable to remove its improvements or any part thereof, because it had no access to said property.

VI.

The defendant spent approximately \$17,500.00 in making the improvements aforesaid.

VII.

Said improvements, when said defendant was excluded therefrom, and when said Navy Department took possession thereof, was and is, of the value of \$7,500.00.

Wherefore, this defendant prays that its damages for the taking of said improvements be determined to be the sum of \$7,500.00, and that a judgment for that amount be entered in favor of the Southern

California Japanese Fishermen's Association, and
for its costs.

A. L. WIRIN and J. B. TIETZ,
By /s/ A. L. WIRIN,

Attorneys for Southern California Japanese Fish-
ermen's Association.

(Duly Verified.)

[Affidavit of Service by Mail attached.]

[Endorsed]: Filed Jan. 16, 1946. [4]

[Title of District Court and Cause.]

MOTION TO STRIKE FROM ANSWER OF
DEFENDANT SOUTHERN CALIFORNIA
JAPANESE FISHERMEN'S ASSOCIA-
TION, a corporation

(Parcel No. 290)

Comes now the United States of America, plain-
tiff herein, by and through Eugene D. Williams,
Special Assistant to the Attorney General, and
Reuben Rosensweig, Special Attorney, Lands Di-
vision, Department of Justice, as its attorneys, and
moves the above entitled Court for an Order strik-
ing from the Answer of defendant Southern Cali-
fornia Japanese Fishermen's Association, a cor-
poration, in the following particulars, to-wit:

1. Commencing at line 24, page 2, and ending on
line 29, page 2, designated in said Answer as para-
graph IV, as follows:

“IV.

“This defendant is informed and believes, and
on such information and belief charges the fact to

be that said improvements remain on said premises and that the plaintiff through the Navy Department is in possession of said premises and has [5] been since defendant was excluded therefrom, actively using said improvements for its own use and benefit to the exclusion of said defendant.”

2. Commencing at line 31, page 2 and ending on line 5, page 3, of said Answer, designated therein as paragraph V, as follows:

“V.

“That notwithstanding the privilege granted by the said permit issued by the Harbor Commission that said defendant was accorded a right to 30 days after notice of cancellation to remove said buildings, the defendant, by reason of taking possession thereof by said Navy Department, was unable to remove its improvements or any part thereof, because it had no access to said property.”

3. Commencing at line 7, page 3 and ending on line 8, page 3, of said Answer, designated therein as paragraph VI, as follows:

“V.

“The defendant spent approximately \$17,500.00 in making the improvements aforesaid.”

Said Motion will be made upon the grounds that the allegations in paragraphs IV and V apparently are based upon the assumption that the improvements upon the above numbered parcel, upon the institution of the above numbered condemnation proceedings, were not acquired therein, and that the United States Navy Department remained in pos-

session thereof without authority, and further, that said allegations are immaterial, incompetent and irrelevant.

Said Motion will be made upon the further grounds that the allegations contained in paragraph VI in said Answer, as above set forth, are immaterial, incompetent, irrelevant and redundant and that the amount [6] of money spent in the construction of improvements is inadmissible.

Said Motion will be based upon the files, records, papers and proceedings in the above entitled matter and upon the Points and Authorities presented herewith.

Dated: March 25, 1946.

EUGENE D. WILLIAMS,
Special Assistant to the Attorney General.
REUBEN ROSENSWEIG,
Special Attorney, Lands Division,
Department of Justice.
By /s/ REUBEN ROSENSWEIG,
Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 25, 1946. [7]

At a stated term, to-wit: The February Term, A.D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 29th day of April, in the

year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Jacob Weinberger, District Judge.

[Title of Cause.]

This cause coming on for (1) hearing on motion of the plaintiff, filed March 25, 1946, to strike from the Answer of defendant Southern California Japanese Fishermen's Association; and (2) for setting for trial, (as to Parcel 290); Reuben Rosensweig, Special Attorney, Lands Division, Dep't of Justice, appearing as counsel for the Government; A. L. Wirin, Esq., appearing as counsel for the defendant Southern California Japanese Fishermen's Association:

Respective counsel make statements and it is stipulated that defendant consents to granting of the motion, and it is ordered that the said motion is granted.

Respective counsel state that a stipulation of facts and briefs will be filed to simplify the issues and that thereafter, within approximately two weeks, counsel desire to request a setting.

It is ordered that the cause be, and it hereby is, continued to May 13, 1946, for setting as to Parcel 290. [8]

[Title of District Court and Cause.]

COUNTERDESIGNATION OF CONTENTS OF RECORD ON APPEAL

Comes now the United States of America, the appellee herein, pursuant to Rule 75, Federal Rules

of Civil Procedure, and counterdesignates the following portions of the record to be contained in the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause:

1. Answer of Southern California Japanese Fishermen's Association filed January 16, 1946.

2. The motion to strike referred to in the affidavit of A. L. Wirin, of date April 13, 1946. Also the ruling on that motion.

3. The ruling of Judge Hollzer on valuation referred to by Judge Weinberger in his order of October 2, 1946.

4. Transcript of the evidence before the court.

5. Exhibit No. 1, omitting the legal descriptions.

/s/ JAMES M. CARTER,
United States Attorney. [10]

[Endorsed]: Filed Aug. 17, 1948. [9]

[Title of District Court and Cause.]

WITHDRAWAL OF ITEM 3 OF COUNTER-
DESIGNATION OF CONTENTS OF REC-
ORD ON APPEAL

Comes now the United States of America, the appellee herein, and withdraws from its Counter-designation of Contents of Record on Appeal filed in the Office of the above identified Court the 17th day of August, 1948, that portion thereof identified as Item 3, reading as follows:

The ruling of Judge Hollzer on valuation referred to by Judge Weinberger in his Order of October 2, 1946.

/s/ JAMES M. CARTER,

United States Attorney.

[Affidavit of Service by Mail attached.]

[Endorsed]: Filed Nov. 15, 1948.

[Title of District Court and Cause.]

NOTICE OF FILING OF WITHDRAWAL OF
ITEM 3 OF COUNTERDESIGNATION OF
CONTENTS OF RECORD ON APPEAL

To: A. L. Wirin and Fred Okrand, Attorneys for
Southern California Japanese Fishermen's As-
sociation, et al.

Please take notice that the United States of
America, appellee, has this day filed its Notice of
Withdrawal of Item 3 of Counterdesignation of
Contents of Record on Appeal.

Dated: This 15th day of November, 1948.

UNITED STATES OF AMERICA,

Plaintiff,

By JAMES M. CARTER,

United States Attorney.

GEORGE F. HURLEY,

Special Attorney, Lands Division,

Department of Justice.

By /s/ GEORGE F. HURLEY,

Attorneys for Plaintiff-Appellee.

[Endorsed]: Filed Nov. 15, 1948.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENTAL RECORD

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 12, inclusive, contain full, true and correct copies of Answer of Southern California Japanese Fishermen's Association; Motion to Strike From Answer of Defendant Southern California Japanese Fishermen's Association; Minute Order Entered April 29, 1946; Counter-Designation of Contents of Record on Appeal; Withdrawal of Item 3 of Counter-Designation of Contents of Record on Appeal and Notice of Filing of Withdrawal of Item 3 of Counter-Designation of Contents of Record on Appeal which, together with copy of reporter's transcript of proceedings on August 12, 1947, transmitted herewith, constitute the supplemental transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 19th day of November, A.D. 1948.

[Seal]

EDMUND L. SMITH,
Clerk.

United States District Court for the Southern
District of California, Central Division

The Honorable Jacob Weinberger, Judge presiding.

No. 2078-W—Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAND, etc., et al.,

Defendants.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

August 12, 1947

Appearances: For the Plaintiff: George F. Hurley and Reuben Rosensweig, Special Attorneys, Lands Division, Department of Justice. For the Defendants: Fred Okrand, Esq., 416 Douglas Building, Los Angeles, California. [1*]

The Clerk: No. 2078-W, Civil, United States vs. Land, et al., for trial.

Mr. Hurley: If the court please, the plaintiff is ready as to the parcels at issue at this moment.

Mr. Okrand: Ready for the defendants, your Honor.

Mr. Hurley: If the court please, a jury has been waived, and the cause has been submitted to the court; and your Honor will recall that a few weeks ago we had a pre-trial hearing at which the issue before the court was the rule of evidence to be fol-

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

lowed in the introduction of testimony on behalf of valuation.

It was contended by the government that the basis of valuation should be the value, the removal value, of the buildings upon the lots whereon they were situated at the time the declaration of taking was filed; and the order of possession was entered on the 21st of February, 1942. It was an immediate order of possession, and the United States went into possession forthwith.

Your Honor will recall that the title situation with respect to the parcels involved in this case was this: the fee was owned by the City of Los Angeles through the Harbor Department of that city.

The Harbor Department had issued 30-day revocable permits. [2]

These permits provided that at the end of 30 days after notice the owner must remove the fixtures.

Before this order of possession, it being summary, there was no opportunity before 30 days elapsed for the owners of the property to remove their buildings under their permits.

Therefore, it became a question to determine, since they did not own the fee, what was the value of their improvements.

The matter had been previously heard by Judge Hollzer, and both Judge Hollzer and you reached the same conclusion: that the proper rule of evidence to be observed in the introduction of evidence on this matter was that the value of the property was for removal and not as a part of the realty to which the defendants' counsel excepted; and acting

upon that instruction, the United States has prepared to present testimony to support the valuation of the parcels involved.

Now, for your Honor's information and for the purpose of the record, the parcels involved in this particular hearing, and which are subject to your Honor's ruling, are Parcels 290, 294, 314, 326, 338, 354, 355, 356, 357, 358, 362, 366, 367, 368 and 373-A.

With regard to Parcel 373-A, we have this to state:

There is no such parcel in the complaint or declaration of taking or any of the amended or supplemental declarations [3] of taking. But there is a tract of land with some improvements on it which can be and will be, in the course of the hearing today, identified. It was included, I might say, in the taking, and was occupied by the United States; so there is no question about that.

So, for the purposes of identifying it in this action, we have agreed to call it 373-A.

On that parcel we will identify it, describe what is on it.

Our witness, however, not knowing what that parcel was, could not prepare his notes. But we will stipulate at the appropriate time to whatever figures he will present will be binding upon both parties, and in that matter there will be evidence before the court as to the valuation of Parcel 373-A, for your Honor's judgment pursuant to this hearing.

Now, the United States, therefore, will contend that the valuation of these properties is their re-

moval valuation. And that is the sole issue which the plaintiff will have to present to the court at this time.

The Court: What parcels are being disposed of today?

Mr. Okrand: The ones that Mr. Hurley mentioned are the ones in issue.

Mr. Hurley: There are 15 parcels altogether, and it constitutes approximately half of the outstanding and open parcels in this action. Some of the ones remaining, your [4] Honor, will have to be disposed of by publication as we have had difficulty in locating the defendants.

Mr. Okrand: Counsel for the government has well stated the status of the case, your Honor. And I shall at the appropriate time restate defendants' position as to the valuation by way of objection to the evidence that will be introduced by the government witnesses on the stand.

Mr. Hurley: Is your Honor prepared to hear the testimony on behalf of the plaintiff?

The Court: Yes.

Mr. Hurley: Come forward, Mr. Hults.

RALPH M. HULTS

called as a witness by and on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Ralph M. Hults, H-u-l-t-s.

Direct Examination

By Mr. Hurley:

Q. Mr. Hults, where do you live?

(Testimony of Ralph M. Hults.)

A. In Pasadena.

Q. What is your occupation?

A. Realtor and real estate appraiser.

Q. How long have you pursued that calling in this locality?

A. Since 1916 in the real estate business, and in [5] real estate and appraising since 1925.

Q. In the course of your experience in the real estate business, what kind of property have you dealt in?

A. Oh, almost all types, except large downtown properties, office buildings.

Q. As an appraiser, what types of property have you appraised?

A. Almost all types, except large downtown office buildings.

Q. Are you familiar with the district in the County of Los Angeles which is commonly known as the Harbor District?

A. Yes, sir, I am.

Q. Have you had occasion from time to time to appraise property in that region?

A. Yes, on a good many occasions.

Q. What type of property prevails in the Harbor District? What is the predominant characteristic of the property down there?

A. Well, mostly heavy industrial properties and wharf facilities, and things of that sort.

There are, however, some housing or what was prior to the war some housing facilities, also, for people who worked in the harbor area.

Q. Yes. On or about January and February and

(Testimony of Ralph M. Hults.)

March of 1942 did you have an inquiry directed to you by the United [6] States Government relative to making an appraisal of property in this area?

A. Yes, I did.

Q. Pursuant to that inquiry did you proceed to the region which is commonly known as the Fish Harbor area to make that study?

A. Yes, I did.

Q. Will you explain to the court just what you did in connection with the making of that study?

A. Well, there were also other properties involved in the same appraisal besides the Fish Harbor area. There was about 10 blocks along Seaside Avenue which the government was acquiring in fee, and I made a personal investigation of each of the properties.

I had people in my employ measure all of the improvements on the properties. We photographed all of them. I personally made an inspection of the buildings on the property, made a search of the records to determine the age of the buildings and also made an investigation to learn about the asking price and selling price of properties in the general area.

I think I had a title search made through the Title Insurance and Trust Company involving a number of fee-owned properties to find out when they had been sold and what they had been sold for, and one thing and another. [7]

Q. In the course of your investigation and study with respect to this property did you discover that

(Testimony of Ralph M. Hults.)

certain parcels of this property, certain parcels involved in this proceeding, were properties consisting of improvements constructed upon permits from the City of Los Angeles to the—

A. (Interposing): Yes, I did, quite a large number of them.

Q. Can you recall offhand or from a study of your notes—could you advise the court as to whether parcels 290, 294, 314, 326, 338, 354, 355, 356, 357, 358, 362, 366, 367, 368 and 373-A were such properties?

A. All excepting 373-A, and I find in examining a map that was prepared by me that I have certain improvements located on the property where apparently 373-A was supposed to be and undoubtedly have notes in my file about the type of construction.

I have a sketch of the two buildings that were located on it, but I don't have the notes as to the type of construction, and so forth.

Q. I trust you won't object to this leading question, but insofar as your records show, you are quite certain that all of the parcels which I have enumerated were such properties, except Parcel 373-A?

A. Yes, that is correct.

Q. In the course of your examination and study of the [8] parcels which I have enumerated, did you make any discoveries as to what kind of improvements were situated upon those properties?

A. Yes, I made an inspection of the improvements on each of the properties.

Mr. Hurley: Counsel, in order to save time, will

(Testimony of Ralph M. Hults.)

it be necessary for me to have him describe each of the parcels?

Mr. Okrand: No, I think a general statement that they were—well, I would stipulate that they were improvements of a permanent nature: buildings, residences attached as a part of the land.

Mr. Hurley: Well, I think that is fair enough.

Q. That is true as a fact, is it not?

A. Yes, that is true.

Q. Now, from your analysis of these parcels and from your knowledge of the improvements that were situated upon them as of February 21, 1942, did you reach a conclusion as to what the fair value of those buildings for removal purposes would be as of that date?

Mr. Okrand: Your Honor, I object to the question on the ground that the theory of the question is that the proper valuation in this action is the removal value of those buildings from the land.

It is the defendants' contention that the proper evaluation should be those buildings as a part of the land and that [9] the evaluation should be taken as a whole and not as a removal value.

The Court: It should be taken as what?

Mr. Okrand: The valuation should be those buildings valued as a part of the land as a whole, rather than those buildings as removed from the land.

The Court: Well, assuming that the theory upon which the court heretofore made its order in that respect, rather not an order but an indication that

(Testimony of Ralph M. Hults.)

such would be the ruling that the evaluation should be based on the removal value, the objection is overruled.

Mr. Okrand: Yes, your Honor. May I make just one statement?

Mr. Hurley: You had better except to that because the rule did not provide for that.

Mr. Okrand: May I make one statement before I make the exception, your Honor?

Since your Honor made his indication at our pre-trial hearing several months ago, two cases have been cited or have come to my attention which, if the court would care to look at them, would throw perhaps some light on the subject.

In those two cases it was the government who was contending that the valuation should be taken as of a whole and that the particular interests of the land should not be split up for purposes of evaluation in an eminent domain [10] proceeding.

The Court: Will you speak a little louder, please?

Mr. Okrand: Since your Honor made his indication at the pre-trial hearing several months ago in which you indicated that the property valuation was the buildings as removed from the land, two cases have been cited, not precisely on the particular point, but extremely helpful, I believe, to the court in that in those cases the government contended and was successful in its contention that the proper evaluation was the evaluation as a whole and that the particular interests of the condemnees

(Testimony of Ralph M. Hults.)

are not to be considered by the court in determining the valuation of their particular interests; that that was a matter to be determined between the condemnees themselves amicably, if possible or, if necessary, by a court in determining their interests. But insofar as the condemnation proceeding itself was concerned, the entire thing that was taken by the government is to be valued as a whole. And I would like to—

The Court (Interposing): Well, was that land privately owned? Or was it owned, as in this case, by a municipality on revocable permits?

Mr. Okrand: They were privately-owned properties, your Honor.

The Court: Would that not make a difference?

Mr. Okrand: No, I do not believe so, your Honor. The [11] principals of those cases are what I am contending for, and that is where there are several interests in land that the condemnation evaluation should be one evaluation for the total amount of what was taken by the government.

The Court: But in those other cases the taking was of the land, and improvements, was it not?

Mr. Okrand: Yes.

The Court: In this case the taking is only of the improvements.

Mr. Okrand: No, your Honor, the government took the land and the improvements.

The Court: I know. But you have nothing to do with the land.

Mr. Okrand: That is the precise point.

(Testimony of Ralph M. Hulst.)

The Court: I understand. But I say there was a transaction consummated between the owner of the land, the city—

Mr. Okrand: Yes.

The Court: —and the government, separate and apart from your transaction.

Mr. Okrand: Yes. But of that transaction the government cannot take advantage, it is our contention.

The Court: You have argued that before.

Mr. Okrand: Yes. I would like to cite those cases to your Honor if you want to look at them, perhaps.

The Court: Have they been cited before? [12]

Mr. Okrand: No, they haven't.

The Court: I should like to see them.

Mr. Okrand: These are new cases. That is the reason I would like to bring them up. Shall I do it now?

The Court: You might prepare a memorandum.

Mr. Hurley: What are the cases?

Mr. Okrand: The first case, Eagle Lake Improvement Company vs. United States, 160 Fed. (2d) 182, Circuit Court of Appeals of the Fifth Circuit.

The Court: What was it?

Mr. Okrand: 182. Fifth Circuit. Those are 1947 cases.

The other one is United States vs. 19,573 Acres of Land. That is reported in 70 Fed. Supp. 610. I don't know what district that is.

(Testimony of Ralph M. Hults.)

Mr. Hurley: It is one of the eastern districts.

Mr. Okrand: Are you familiar with that?

Mr. Hurley: Yes. If the court please—have you completed?

Mr. Okrand: I wanted to give that to the court because we hadn't cited those cases to you before.

The Court: What was done in those cases? What kind of land was it?

Mr. Okrand: The only point that I make, your Honor, is this: that there were several interests involved in the land, and those cases definitely settle, I think, that the [13] evaluation in condemnation proceedings should be the total amount of all that is taken and that if there are conflicting interests in what was taken by the government that that is a matter not the government's concern but the concern of the various persons involved in the taking.

The Court: In this case I think it developed, did it not, that your tenancy had been terminated prior to the government's taking?

Mr. Hurley: That's right.

Mr. Okrand: Well—

The Court: If I remember correctly.

Mr. Okrand: —of course, that brings up an issue that we had both felt would not have arisen, that is, the taking was done this way, you see: in other words, the Navy told the government, "We want this property. Condemn it."

The Navy also told the City, "The government is going to condemn the property; so revoke the permit."

(Testimony of Ralph M. Hulst.)

So the City revoked the permits a couple of days or four or five days before.

We contend that that was no termination of tenancy at all.

The Court: You contend it was all one plan?

Mr. Okrand: Well, not a plan. It was part of the condemnation proceeding.

The Court: I think that was considered before.

Mr. Okrand: Yes, it was.

The Court: And this conclusion was arrived at after a consideration of all that situation?

Mr. Hurley: I feel, if the court please, that the two cases cited by counsel do not change the rule because the two cases cited are not cases wherein the interests were divided by the result of exercise of lawful right by the owner of land to revoke a permit and, consequently, I feel that neither of those cases applies to this particular situation.

The Court: In other words, you feel that in this particular case the owners of the improvements are entitled only to the benefit of those improvements and no benefit as a result of any land valuation in which they had an interest?

Mr. Hurley: That is correct, sir, and the day this condemnation actually was instituted the owners had a legal right to the property which consisted of the right to take those improvements and move them somewhere or dispose of them somehow, and the valuation which should be assigned to them in order to give them just compensation under the Constitution is that particular valuation.

(Testimony of Ralph M. Hults.)

That was the point which was argued by the United States, by my associate, Mr. Rosensweig, at the time the matter was before your Honor previously.

We felt that under the circumstances it would be that [15] valuation, and in pursuance of that we have prepared our witness or, rather, had him prepare himself to testify on that basis.

The Court: Your objection then is overruled.

Mr. Okrand: Very well, your Honor. As I understand it, in the eminent domain proceedings the common law necessity for exception is the rule: so, if the court please, I take an exception to the court's ruling.

The Court: Very well.

Mr. Hurley: In order to obviate the necessity of counsel's exceptions, the government is prepared to stipulate as to any objection that will be stated that there is an exception so that you will not need to constantly arise.

All the objections may be considered as excepted.

Mr. Okrand: Excepted to?

Mr. Hurley: Yes.

The Court: Very well. There need not be repetition of your exceptions to the ruling as to each objection.

Mr. Hurley: That is right.

Mr. Okrand: Yes, your Honor.

Q. (By Mr. Hurley): Mr. Hults, from your studies and from your indicated preparation on this matter, could you give what, in your opinion, is

(Testimony of Ralph M. Hults.)

the fair removal value of the fixtures and improvements which were located on Parcel 290 as at February 21, 1942? [16]

A. Yes, sir, \$1,650.

Q. Now, directing your attention to Parcel 294, will you give the court your opinion of the fair removal value of the fixtures that were located on that parcel on the 21st of February, 1942?

Mr. Okrand: Your Honor, in order to avoid repetition, may it be deemed that counsel for the defendants objects to each question by the government as to the removal value on each particular parcel so that I don't have to object each time he asks that question? The court obviously will overrule the objection, and the exception is taken.

Mr. Hurley: The government is perfectly willing to agree that it will be considered that counsel may make one objection at the conclusion of all this testimony.

The Court: Very well.

Mr. Hurley: Covering all of the parcels, and it will not be deemed that he has waived his rights because he did not object to each one.

The Court: It is stipulated you would object and that you have your exception.

Mr. Hurley: Mr. Reporter, did the witness answer?

The Witness: No, I did not. On Parcel 294, \$350.

Q. (By Mr. Hurley): You can assume, Mr. Witness, that in every case the date of valuation is

(Testimony of Ralph M. Hults.)

February 21, 1942, so we won't have to repeat that date. [17] A. Yes.

Q. Have you formed an opinion as to the fair removal value of the improvements situated on Parcel 314? A. Yes, sir, \$2,250.

Q. With respect to Parcel 326, have you formed a like opinion?

The Court: Have you made a report on these valuations?

The Witness: Yes, sir, I have.

The Court: Can you set out the valuations as to each one of these parcels in the form of a report so that it can be an exhibit in the case?

Mr. Okrand: I would so agree. I think it would be very helpful.

Mr. Hurley: I think it could be done. What your Honor requests is a summary by the witness on his evaluations on these several parcels?

The Court: Yes. In other words, you have evaluated in accordance with the questions propounded by government counsel each parcel that has already been—

The Witness (Interposing): Yes, I have, all those here before me.

The Court: You have all of those, and you can make your synopsis on that exhibit, can you not?

The Witness: Yes, sir, surely. Direct a letter to the court? [18]

The Court: In whichever form you prefer.

The Witness: Or to Mr. Hurley?

Mr. Hurley: We could prepare—

(Testimony of Ralph M. Hults.)

Mr. Okrand: Prepare a stipulation. That is what we hoped to do anyway.

Mr. Hurley: In view of the fact that the witness' testimony is what the court wants—

The Witness (Interposing): I have them right here before me, unless you would rather have it in a different form. There are only about eight or nine more parcels.

Mr. Hurley: There are 15 parcels altogether.

The Court: Well, you may proceed.

Mr. Hurley: We will be perfectly willing to file with the court a synopsis of the witness' testimony as to valuations on each of these parcels.

The Court: Yes. Well, you may proceed. No. 326 was your last.

The Witness: 326, \$200.

Q. (By Mr. Hurley): Parcel 338: What is the fair removal value as of that date?

A. \$300.

Q. And Parcel 354? A. \$600.

Q. The parcel next to it, 355, Mr. Hults?

A. \$400. [19]

Q. And Parcel 356? A. \$600.

Q. Parcel 357? A. \$350.

Q. Parcel 358?

The Court: Parcel 357 was how much?

Mr. Hurley: \$350, your Honor.

The Court: Yes?

The Witness: 358, \$500.

Q. (By Mr. Hurley): And Parcel 362?

A. \$350.

(Testimony of Ralph M. Hults.)

Q. Parcel 366? A. \$300.

Q. Parcel 367? A. \$700.

Q. Parcel 368? A. \$500.

Mr. Hurley: Now, if the court please, with regard to Parcel 373-A, which is the only parcel which the witness has not testified to yet, he advises us that because he could not locate that parcel, due to the fact that the identifying letter was not disclosed in any of the maps or plats, that he will have to refer to his penciled memoranda which he has in his files and will supply that amount at a later date. And we will submit that to counsel for the defendants, and [20] if it is satisfactory we will add that to the exhibit which will be prepared for your Honor as the evaluation for Parcel 373-A.

So at the present time the government moves that the testimony as to Parcel 373-A be left open until those figures can be supplied.

The Court: You stipulate that he may file a statement or letter with respect to that?

Mr. Okrand: We will so stipulate.

Mr. Hurley: Yes, we will stipulate to that; yes, sir.

The Court: In view of his verbal testimony?

Mr. Okrand: Yes.

Mr. Hurley: Yes, sir. Would you like to cross examine?

Mr. Okrand: Yes.

Cross Examination

By Mr. Okrand:

Q. Mr. Hults, when you made your appraisal in

(Testimony of Ralph M. Hults.)

1942, all the buildings were still standing at that time, were they not?

A. No. I was just refreshing my memory, and I think there were five sets of improvements that I never saw; and all the information I ever had was from other people who had reviewed the property prior to the time that I had.

None of those happened to be any of the parcels at issue in this case, however. I am just refreshing my memory [21] from my notes, and I saw the buildings on all of the parcels appraised, except Parcels 303, 311, 312, 313, 322, 323 and 345; and none of those parcels are at issue at this time.

Q. Now, from your examination of the parcels at issue at this time and of the entire section, would you say that it exhibited signs of having been a thriving business and commercial community?

A. Oh, yes, there is no doubt about it.

Q. In your appraisal, Mr. Hults, did you also make an appraisal as to the value of the parcels now involved on the theory of their value as a part of the land?

A. Yes, sir, I did.

Q. As to Parcel 290, do you have the evaluation of that parcel as a part of the land?

A. Yes, sir.

Q. What is that evaluation?

Mr. Hurley: If the court please, the government objects to that question upon the ground and upon the theory on which the testimony is being presented in this case. The evaluation of the property as a whole is not pertinent for the ascertain-

(Testimony of Ralph M. Hults.)

ment of value because the rights of the property owner are to recover only the values which the property would have to him as removed.

The Court: How is counsel going to establish his record if he intends to take the matter up on appeal unless that is [22] gone into?

Mr. Okrand: That is what we are trying to do, your Honor.

The Court: Unless that appears in the record?

I have ruled against the defendants' theory, but in the event that the case is taken up on appeal and it should be reversed, then could not the record be there so we could avoid having to send the proceedings back for another trial?

Mr. Hurley: If the court please, I should imagine that probably the most proper procedure here under the circumstances would be if your Honor were so disposed to overrule or to sustain my objection, at the close of the testimony that counsel for the defendants—

The Court: Would make his offer?

Mr. Hurley: —would be entirely within his rights to make his offer of proof; and to that extent we would be willing to submit whatever figures he wished to the court as to what he would prove if the avenue of evidence were open to them.

In order that the matter will not be interminable, we would be willing to waive the formalities of the proof so that he could get right to the substance of it.

In other words, when I would say, "If I asked

(Testimony of Ralph M. Hults.)

this question," the answer would be so-and-so; but you can just give the ultimate facts which the witnesses would offer under [23] the circumstances.

The Court: That is to say, he would offer to prove by this witness—

Mr. Hurley: Yes, sir.

The Court: —that if the objection were overruled, the witness would testify thus-and-so, is that it?

Mr. Hurley: Yes, sir.

Mr. Okrand: Either way is agreeable with us, your Honor.

The Court: That is probably the proper way of getting that in the record.

Mr. Okrand: Very well. Then what is the court's ruling?

The Court: There is now an objection to the question?

Mr. Hurley: Yes, I have objected.

Mr. Okrand: Yes, sir.

Mr. Hurley: The question proposes an improper basis of evaluation; therefore, it is incompetent, irrelevant and immaterial. It does not tend to support the issues presented in this case.

The Court: If you withdraw your question, you might proceed with your offer and then make the objection to the entire offer.

Mr. Hurley: Well, I think if my objection should be sustained by your Honor— [24]

Mr. Okrand (Interposing): Then I can make my offer.

(Testimony of Ralph M. Hults.)

Mr. Hurley: —then counsel can make his offer.

Your Honor, I can see what is the difficulty. In condemnation proceedings the Supreme Court, in preparing the rules for civil actions, did not include condemnation proceedings; but by its terms expressly excluded them, except on matters of appeal.

Consequently, we are back where we were in the old common law days and not under the provisions of the practice act as it stands now.

For that reason, we are back just as it was when your Honor was on the Superior bench in the State.

The Court: Well, then, the objection is sustained.

Mr. Okrand: Very well, your Honor. At this time I should like to make an offer of proof through the witness now on the stand.

Mr. Hurley: That if he were examined he would testify—

Mr. Okrand: I will make it in this way: that if the witness were examined, he would testify that the value of the parcels involved in these proceedings as a part of the land was, as of February 21, 1942, as follows:

Parcel 290, \$4,800; Parcel 294—and if I may ask for the witness' assistance, if I am wrong in what he would testify—

The Witness (Interposing): Yes, \$4,800 was correct on [25] the other one.

Mr. Okrand: Parcel 294, \$1,050.

The Witness: That is correct.

Mr. Okrand: Parcel—

(Testimony of Ralph M. Hulst.)

The Court (Interposing): Now, do you want the witness to testify?

Mr. Hurley: The witness doesn't need to answer.

Mr. Okrand: I just want him to follow me, and if I am wrong he can so state.

The Court: If he is wrong, you can correct him. But let us not have your testimony in the record.

Mr. Okrand: Parcel 314, \$8,750;

Parcel 326, \$1,000;

Parcel 338, \$1,350;

Parcel 345, \$3,000;

Parcel 355, \$1,100;

Parcel 356, \$3,500;

Parcel 357, \$2,700;

Parcel 358, \$2,900;

Parcel 362, \$1,950;

Parcel 366, \$850;

Parcel 367, \$3,250;

Parcel 368, \$1,400; and

Parcel 373-A—

Mr. Hurley (Interposing): If the court please, on Parcel [26] 373-A, since we have not yet offered any evidence, I think counsel should make the reservation.

Mr. Okrand: Yes. With reference to Parcel 373-A, since theoretically the witness knows nothing about that at the moment, we would make the same reservation and ask that the witness, when he submits the statement, that he include on that his valuation of 373-A on his theory.

(Testimony of Ralph M. Hulst.)

The Court: You are offering to establish by this witness that the value of the improvements and the real estate—is that your offer?

Mr. Okrand: Oh, no, just the improvements. That is all we are considering here.

The Court: The improvements?

Mr. Okrand: Other than the land itself that was taken. That is all that belongs to the defendants here. And that is what our evaluation figures were in our offer of proof.

The Court: Well, give me more detail on your theory there.

Mr. Okrand: Yes, I will be glad to. The theory is this, your Honor: that a certain improvement on land has a certain value when, considered as a part of the land to which it is attached; and as the offer we have made shows, it is considerably more than the valuation of that particular improvement as it is removed from the land, taken separate and apart. In other words, when a building is a part of the land, [27] it is more or less a going concern; that is, its value is enhanced by reason of the fact that it is a part of the land itself.

The Court: What elements are considered in that respect?

Mr. Okrand: Well, I can get the evidence from the witness himself.

The Court: I want your theory of it.

Mr. Okrand: Well, I believe that since there is an expense involved in removing a building from the land, that that would decrease the valuation of

(Testimony of Ralph M. Hulst.)

that particular building because it is not a part of a going concern already.

The Court: Well, I know. But does it make a difference whether the improvements are on leased property or on fee property or what?

Mr. Okrand: No, I don't believe so.

The Court: For example, suppose that you have improvements on a piece of property upon which the lease has six months yet to go or six years yet to go or that the owner of the improvements is also the owner of the fee. Now, isn't there a difference?

Mr. Okrand: Not as to the valuation of the buildings themselves. In other words, as I understand it, a building has a certain evaluation when considered in relation to its environment, where it is situated, which it would not have if it were situated at another place or if just the value of [28] the lumber itself in the building were considered. And that is the reason for the difference in the evaluation here.

Perhaps the witness can be of assistance to us, your Honor, since he is familiar with that.

The Court: All right. I want to pass on this objection.

Mr. Okrand: Oh!

The Court: Maybe I should at this time. You have made this offer.

Mr. Okrand: Yes.

The Court: Now, the offer is denied. You may proceed.

Mr. Okrand: That concludes our examination of this witness.

(Testimony of Ralph M. Hulst.)

Mr. Hurley: If the court please, the plaintiff rests.

The Court: Let us see. Should we have in the record the basis of the appraisalment?

Mr. Okrand: It might be well. Then it would show why there is a difference of evaluation on the same pieces of wood on one theory as against another.

The Court: Why wouldn't it be a good idea for this witness to make his report showing what he examined, what he took into consideration, in making this appraisalment, so we will have a basis of value?

Otherwise all we have is a naked figure here. We don't know what the improvement is. [29]

The Witness: I have a description of the improvement here on each of the parcels, your Honor, and also have the theory under which I made the appraisal in each instance.

Mr. Hurley: As I understand the law, the responsibility of the plaintiff in a matter of this sort is to present a witness who has examined the property. But we are rather limited in our scope of examination because certain kinds of questions are proper on cross examination which are not proper on direct.

In order to avoid the rather technical procedures necessary to keep it within the scope of direct examination, I asked at the outset whether it would be necessary for me to go into detail as to each of

(Testimony of Ralph M. Hults.)

thees parcels, and counsel for the defendants had indicated it was not.

Now, if it is now a situation where that ought to be done, each parcel should be separately described and what was located on it and what the witness did with respect to each parcel, that of course could be done.

But, as I say, I did not do it, believing that we could save some time and that the defendants didn't consider it necessary; that counsel would not cross examine on it.

The Court: I am afraid that the evidence standing alone would be rather meager.

Mr. Okrand: It wouldn't be very helpful.

Mr. Hurley: Very well. Then I shall retrace my steps [30] and do that which I thought we could avoid and thus make the record reflect the minute details with respect to these parcels.

The Court: Let us see. You have made a synopsis of the examination, have you?

The Witness: Yes, I have, your Honor.

The Court: Do you have that?

The Witness: Yes, I do.

The Court: Why don't you exhibit that to counsel and see if that can be copied and stipulated to and added as an exhibit?

(Brief pause in the proceedings.)

Redirect Examination

By Mr. Hurley:

Q. Mr. Hults. in connection with Parcel 290,

(Testimony of Ralph M. Hults.)

what did you take into consideration in arriving at your evaluation of that parcel?

A. Under which theory?

Q. Under the theory of the removal value.

A. The price that somebody would be willing to pay for the building, for the purpose of removing it from the premises, and also under the theory that there was no place on Terminal Island at that time to which it could be removed and it would have to be removed from Terminal Island.

The Court: It would have to be wrecked? Or could it [31] have been moved?

The Witness: Some of the buildings, I took into consideration the width of the roadways and the width of the bridge leading from the island, and on the buildings which were too large to move without cutting in two, I gave a much less proportionate value than I did on smaller buildings which could have been moved without being cut in two.

I even explored the feasibility of getting some of the larger structures off the island by barge and found that the cost would be prohibitive by that method and decided that the only feasible way of moving them would be by regular moving trucks and rollers and things of that sort.

The Court: How did you arrive at your estimate of what a person would be willing to pay for that building, then?

The Witness: Well, I talked to some building wreckers who buy buildings, and I also had quite a little knowledge because I have run into

(Testimony of Ralph M. Hults.)

these problems a great many times in my appraisal experience, a good many times.

For instance, in appraising school sites, it is necessary to sell houses and remove them; and I have tried to keep familiar with that sort of thing for over a period of years wherever I am appraising properties that have to be removed. I try to keep a record of what is being paid for them.

A little later on in the war I had a record of about 200 buildings that were removed from the naval ammunition [32] depot at Seal Beach. I kept an accurate record of the bids that were made on the houses to the Navy Department.

However, that was after this particular instance, and I hadn't had the experience on so many buildings at one time before.

But I do have a general knowledge of what buildings will sell for to be removed.

The Court: Well, then, to be moved by being dismantled in some instances and by—

The Witness (Interposing): Moving intact in others.

The Court: —moving intact in others?

The Witness: Moving intact in others, yes, sir.

Q. By Mr. Hurley: Do I understand that in each instance you first determined what is the most feasible method of disposal?

A. Well, yes, I looked at the sketches of the buildings to see whether they could be moved in one piece, whether they could be moved across the bridge.

(Testimony of Ralph M. Hults.)

There is only one bridge access—there was at that time—to Terminal Island.

The Court: I take it that the defendants do not question the appraiser's determination of the removal value?

Mr. Okrand: That is right, your Honor. No.

The Court: You do not question that?

Mr. Okrand: No, we do not question the actual figure.[33] What we question is the theory.

The Court: I understand that.

Mr. Okrand: We do not question the figures.

The Court: You don't question the correctness of the appraiser's estimate of the removal value?

Mr. Okrand: No, we do not.

The Court: I guess that determines that particular feature insofar as the testimony of this witness is concerned.

Mr. Hurley: Yes. And the government has rested its case.

Mr. Okrand: I would like to cross examine him a little bit.

The Court: Yes.

Recross Examination

By Mr. Okrand:

Q. Mr. Hults, in your experience as an appraiser you have found, have you not, that the value of a building, while it is situated on a particular parcel of land, will be different, will it not, from the value of that same building if it were removed from that parcel of land?

(Testimony of Ralph M. Hults.)

Mr. Hurley: I object to that question. It is not proper cross examination, under the theory of the evidence which was presented here.

That goes to the same question which was raised by me [34] when I objected to the first question that was asked on cross examination concerning which the offer of proof was made.

It does not tend to come within the framework of this ruling of your Honor's. Therefore, it is incompetent, irrelevant and immaterial.

The Court: Would not your offer of proof determine all those matters insofar as your theory is concerned?

Mr. Okrand: Well, yes, except that I thought that perhaps we ought to go back, as did the plaintiff, and show the basis for the arriving at the figures which we gave in our offer of proof.

In other words, the plaintiff on direct examination gave bare figures on the theory of removal and then retraced his steps at your Honor's suggestion to show the basis of that theory. And we thought perhaps we ought to do that on our theory, too, to show the basis of arriving at the figure on the theory of the evaluation of the improvements.

The Court: I do not see why that should not go into the record, even though the offer has been denied.

He has stated now the method of the appraisalment for the purpose of determining the removal value.

Mr. Hurley: Yes, sir, that is correct.

The Court: Now, counsel wants to elicit from

(Testimony of Ralph M. Hults.)

him a method of appraisement of the value on the theory propounded by counsel for the defendants.

Mr. Hurley: Well, that still falls within the purview of your Honor's ruling because if the witness answers the question, then he must of necessity answer it upon the theory that there is a value being given to the property as a part of the real estate, which is not the issue before your Honor upon the framework of the rule.

I would only tend to confuse the issue rather than enlighten it, as I see it.

The Court. If you know the theory as well as the value, why do you not include that in your offer?

Mr. Okrand: May I have just a moment, and I will do so.

The Court: Yes.

(Brief pause in the proceedings.)

Mr. Okrand: I think I am prepared to make this offer.

We would offer to prove, as a basis for the arriving at the figures which I have offered to your Honor on the value of the property as a part of the whole, that when a building does not have to be removed from the premises and can be used on the premises as they stand, it brings a higher market value to prospective purchasers because they, the purchasers, no longer have to hook up utilities and have transportation costs of bringing a building into an area or the cost of building a new building and that on the open market the witness would testify buildings which can be used in place bring the valu-

(Testimony of Ralph M. Hulst.)

ation which I have suggested to your [36] Honor, and that is the theory on which the higher valuation would be given.

The Court: That is to state in connection with the real estate or otherwise?

Mr. Okrand: In connection with being used on the real estate, yes, those buildings being used on that real estate.

Mr. Hurley: To which the plaintiff objects upon the ground that it supposes a set of facts which are not existent in this case. Therefore, it is irrelevant, immaterial, does not support the issues because the buildings could not stay upon this property because the right of the owner of the building to continue it there had been terminated by lawful operation of the owner of the ground under the terms and conditions of the revocable permit.

Therefore, the offer of proof presupposes a factual setup which is non-existent upon which your Honor has already ruled as outside the range of the proper basis of valuation.

The Court: I am not so sure that I am correct in that ruling. I am wondering if it would not be better to have both of these theories in the record? I have already ruled as to the theory which I will adopt.

Mr. Okrand: I think that would be well, your Honor. We had hoped to do that but had been unable to get official okay on it.

My feeling is that it would be better to have both [37] theories and valuation in the record.

(Testimony of Ralph M. Hults.)

Mr. Hurley: Well, if the court please, we understood and relied upon and prepared this matter upon the basis that the valuation which would be presented to the court would be the removal of these buildings.

The Court: Well, I sustain your theory.

Mr. Hurley: Yes.

The Court: I sustained that. Yet counsel for the defendants maintains another theory which I have not sustained; nevertheless he desires it in the record.

Mr. Hurley: Well, I think he is protected by his offer of proof here to have his rights determined. And I do not believe that if the two theories were in the record under the rules of the Circuit Court that the Circuit Court of Appeals, if it decided that your Honor should be reversed, it could not thereupon enter judgment but would have to remand it anyway.

Consequently, for the purpose of keeping the issues clear and the situation proper, the evidence should be before the court only upon the theory which your Honor has decided should be the theory for the introduction of evidence in this case.

If this were a simple money matter, liquidated as to nature, then under those circumstances the Circuit Court of Appeals could, of course, enter its judgment right there, and [38] the matter would not have to be remanded. But that is not the case here. This is not a liquidated matter.

The Court: I think that is probably correct.

(Testimony of Ralph M. Hults.)

There is no contention by the defendant that the method used by the witness in—

Mr. Hurley: Yes, sir, that's right.

The Court: —in arriving at the removal value is not correct. You have already admitted or agreed to that.

Mr. Okrand: We admit that the witness is competent and has used proper means of arriving at the figure for the removal value.

The Court: And you have no other theory based on that same—

Mr. Okrand (Interposing): We wouldn't arrive at the removal value on any different basis.

The Court: Or different method of valuation?

Mr. Okrand: No. The figure would be the same. Well, your Honor knows our position.

The Court: I think your offer will give you the record that you wish.

Mr. Okrand: We will have our figure in and our basis, and they will have their figure and their basis.

Mr. Hurley: Exactly. I think that is true, your Honor. We can keep to the rule of simplicity under the theory of the defendants. That is the reason I make the objection to the [39] offer.

The Court: The objection is sustained. Anything further?

Mr. Okrand: Nothing from this witness, no, your Honor.

Mr. Hurley: Does your Honor want to hear us at this time after having heard so much from us? Or would you prefer to have us file a memorandum

(Testimony of Ralph M. Hults.)

and synopsis of the witness' testimony and then later hear us on the judgment?

Mr. Okrand: Excuse me one moment. I did not mean to indicate that we had nothing further to offer. We have nothing more from this witness.

Mr. Hurley: Pardon me. I misunderstood you. I am sorry.

The Witness: May I be excused, your Honor, then? Were they through with me?

The Court: Just a moment.

The Witness: Oh, yes, I am sorry.

The Court: I still think you ought to have in the record the synopsis of these improvements.

Mr. Hurley: Yes. We are prepared to present that.

The Court: And it will be done by a report which—

Mr. Hurley: The witness will file?

The Court: —the witness will file, and counsel will stipulate that he may file such report, is that right?

Mr. Okrand: Yes. [40]

The Court: Showing the type of improvements upon which these valuations have been made by the witness.

Mr. Hurley: Yes, your Honor.

The Court: For the government.

Mr. Hurley: Yes, your Honor.

Mr. Okrand: So stipulated.

Mr. Hurley: And it will include 373-A; and by the same token, the government would stipulate to

(Testimony of Ralph M. Hults.)

your enlarging your offer of proof to cover Parcel 373-A.

Mr. Okrand: Yes.

The Court: I did not quite get that last.

Mr. Hurley: And in connection with that, the government is prepared to stipulate that the defendants may enlarge the offer of proof to include figures for 373-A, which is still open.

The Court: Yes.

Mr. Okrand: I wonder, may we not do that now? Could you not get your figure and we give our figure? It is not going to change. An evaluation has been made, apparently.

Mr. Hurley: The witness advised us, as you will recall, that he has his penciled notes at his office, and it is not possible for him to get it here now. Is that not correct, Mr. Hults?

The Witness: Yes. But this gentleman has the figure. Did that come from some other parcel number? [41]

Mr. Okrand: From Mr. Hurley's office, those two figures. I don't know where he got them.

The Witness: I can't find anything in my notes under that parcel number.

Mr. Okrand: I suppose we had better wait, then.

Mr. Hurley: It is possible, Mr. Hults, that this would just be conjecture and not proper evidence.

The Court: Then the witness may be excused?

Mr. Okrand: The government rests, I take it?

Mr. Hurley: Yes, we have rested.

Mr. Okrand: Dr. Ohira,, will you take the stand, please?

The Court: I think the previous witness may remain in the court room in the event something happens that he might be required again.

W. S. OHIRA

called as a witness by and behalf of the defendants, being first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: W. S. Ohira, O-h-i-r-a.

Direct Examination

By Mr. Okrand:

Q. What is your address, Dr. Ohira?

A. 312 East First Street, Los Angeles.

Q. And your occupation? [42].

A. Dentistry.

Q. On or about February 21, 1942, Doctor, did you occupy certain premises located on Terminal Island?

A. Yes, sir, 502 Seaside, North Seaside.

Mr. Okrand: Counsel—

Mr. Hurley (Interposing): I am going to move over here so I can hear.

Mr. Okrand: That is okay. Will counsel stipulate that this is Parcel 294, Dr. Ohira's parcel?

Mr. Hurley: Yes, that is correct, 294.

By Mr. Okrand:

Q. How long had you occupied those premises, Doctor?

(Testimony of Dr. W. S. Ohira.)

A. Since 1925, I think, if I am not mistaken. It is quite a long time.

Q. When you first occupied those premises in 1925, what buildings were on the land?

A. Nothing, no building on the ground.

Q. On or about February 21, 1942, what buildings were on the land?

A. The buildings specified for dentistry was built up.

The Court: In 1942?

Mr. Okrand: 1942, yes. That is the date of the removal.

Q. Who built those buildings, Dr. Ohira? [43]

A. Do you mean who put the money up on it?

Q. That is right. Who paid for the buildings?

A. I paid myself.

Q. How much did those buildings cost?

Mr. Hurley: If the court please, I object to that. That is not conducive to the arrival of the removal value of the buildings. There is no criterion or common basis for determining what that will be worth.

Some buildings might cost a hundred thousand dollars to build and would be useless to remove, where some buildings might be worth a thousand dollars to build and might be worth removing.

The Court: The buildings were built in 1925.

Mr. Okrand. No, not in '25. I haven't established the date they were built.

The Court: What was the date?

(Testimony of Dr. W. S. Ohira.)

Mr. Okrand: All right, I will go into that.

Q. When was the building built?

A. I haven't the exact date. I don't remember at the present, but I have the title at home, the plans, and so forth.

Q. To your best recollection, was it in 1940 or 1935? Just about, can you remember?

A. Around '26, '27, somewhere around there. But I haven't exactly to remember. [44]

Q. After the buildings were built in 1926, did you make improvements to the buildings after that?

A. Oh, yes, suite for dentistry, as that building is specify, and putting double siding.

The Court: I cannot understand you.

Mr. Okrand: Just a minute.

Q. After the building was originally built in 1926— A. Yes.

Q. —did you thereafter make improvements to the buildings?

A. Improvement, put on another siding, another room.

Q. When the building was built in 1926 how much was the cost?

Mr. Hurley: If the court please, I object to that question as improper. The value of the building or its costs at that time is no criterion in determining what its removal value was on February 21, 1942.

The Court: What is the purpose of your question?

Mr. Okrand: I would like to have shown the—

(Testimony of Dr. W. S. Ohira.)

The Court: (Interposing): What difference is it what the cost was? You have made an offer of proof that on this date the appraiser, if allowed to testify, would testify it was worth so much.

Mr. Okrand: That's right, your Honor. I withdraw the question. [45]

Q. When you received the order to leave in February of 1942, were you able to take any of the property with you?

The Court: What was that?

Mr. Okrand: Was he able to take any of the property with him when he was ordered to leave.

Mr. Hurley: If the court please, the basic characteristic of the question is not only objectionable, but the phraseology of it is. To take any of the property with him is definitive of nothing which would enlighten the court of what was there to be removed and which could be evaluated as at February 21, 1942.

Mr. Okrand: I can break it down. I will break it down, your honor.

Q. Were you able to remove the building in February when you were ordered to leave the property?

A. Yes, sir. We asked the official, and they said they could take down.

The Court: What?

The Witness: They said we could remove it.

The Court: Yes?

Mr. Okrand: Q. All right. Now, did you remove it?

(Testimony of Dr. W. S. Ohira.)

A. And we tried to contract, to get the contractors, and asked them to remove. Then the orders change. We couldn't move anything at all. So we just left there. [46]

Mr. Okrand: I will try. Without being too leading, I will try to clarify it.

Mr. Hurley: Yes, the answer is objectionable. If you want to back up and start over again, all right.

Mr. Okrand: Q. Were you permitted to move the building when you finally left in 1942?

A. I asked the Harbor Department officials, and they said we could.

Q. Could or could not? A. Could.

Q. All right. Then why did you not remove the building when you left?

A. Because the Navy Department—

Mr. Hurley (Interposing): If the court please, that is immaterial because the buildings were on the premises at the time they were moved, and whether they could or could not does not enlarge or diminish the removal value.

It is conceded by the government that the buildings were on the site on February 21, 1942, and that they had a value as they stood upon the premises at that time. Consequently, motive for removal or non-removal adds nothing to the determination of value, and I think it is clearly incompetent.

The Court: I think that is correct. You have already stipulated that the removal valuations, as given by the appraiser, were correct. [47]

(Testimony of Dr. W. S. Ohira.)

Mr. Okrand: That is, of the building.

The Court: The building.

Mr. Okrand: Perhaps I am not making myself clear.

Q. Was there anything else in the building on February 21, 1942, besides the building itself?

Mr. Hurley: If the court please, I think that is immaterial because the only thing which can be evaluated and the only thing which should be evaluated is the property was the property which was affixed to the realty at the time and had to be removed for the purposes of complying with the requirements of the permit. Any personal property is not being condemned or taken, nor is there any evidence before the court that any personal property was condemned and taken or peremptorily sequestered by the United States.

There is not a shred of evidence—

Mr. Okrand (Interposing): That is what we are trying to show, your Honor.

The Court: There is not any issue here as to that.

Mr. Hurley: No.

The Court: You have not set up any personal property having been taken for which you should be compensated.

Mr. Okrand: Well, the government has taken the property that was located on the land and if there was personal property which was also located on the land which the government took and which

(Testimony of Dr. W. S. Ohira.)

the defendant was unable to remove, he should [48] be compensated for that.

The Court: Is that in your pleadings?

Mr. Okrand: No.

Q. Did you set up any claim for personal property?

Mr. Okrand: We have not set up a claim. We denied the allegations of the complaint.

The Court: There is no issue except the improvements.

Mr. Okrand: That is correct.

The Court: And the witness is going to set out in his statement just what those improvements consisted of, and I refer to the witness Hults.

Mr. Okrand: He has done that already.

The Court: What is that?

Mr. Okrand: He has done that already.

The Court: Well, then, you have that in the record.

Now, if there was a shotgun or something else, dental tools, those are not in issue.

Mr. Okrand: Very well.

The Court: You do not set up anything of that kind.

Mr. Okrand: Not with this witness, no we haven't, your Honor.

The Court: I mean in any way.

Mr. Okrand: No.

The Court: Is there any place in the pleadings where you set up a claim for personal property, not a part of the [49] building?

(Testimony of Dr. W. S. Ohira.)

Mr. Okrand: No, there is not, your Honor.

The Court: I do not see that it has any value in this case. I have heard the testimony. I do not think this line of testimony would be proper as to this case.

Mr. Okrand: Are you acquainted, Dr. Ohira, with Yosaburo Hama? Mr. Hama?

The Witness: Yes, I know him quite well.

The Court: Can you turn your face this way a little bit so that I can probably catch what you say a little better?

The Witness: All right, your Honor.

The Court: When I see you speak, I can hear you better.

Mr. Okrand: Will counsel stipulate that Mr. Hama is the owner of Parcel 358?

Mr. Hurley: I think so. Just a minute. I will check my record.

Yes, we will so stipulate.

Mr. Okrand: Q. Mr. Hama occupied his premises?

Mr. Hurley: If the court please, I object to that question as incompetent, irrelevant and immaterial. How long any of these parties lived on their property has nothing to do with the removal value of the property which was condemned and taken by this proceeding.

The Court: Are you not pursuing the same line of inquiry [50] to which you have already referred in the previous questions? You have made an offer

(Testimony of Dr. W. S. Ohira.)

of proof that the value of the property at that land is so much.

Now, what difference does it make when or how or who lived on the land?

Mr. Okrand: Well, strictly and technically perhaps it would not. But it would mean that the court could be appraised or know what was taken by the government; in other words, not just pieces of lumber but also actually the livelihood and the homes of persons who had been living and working for many, many years.

The Court: Well, that is not at issue here.

Mr. Okrand: Very well. If the court please, I should like to make this offer of proof, if I may.

The court has sustained the objection, but we would make this offer: that we would prove by this witness, if he were permitted to testify, that the defendant, Iwasaki, occupied his parcel for 12 years;

That the defendant Seiko occupied his property for 17 years;

That the defendant Maeda occupied his property for 14 years;

That the defendant Kawasaki occupied his premises for five years;

That the defendant Nomura occupied his premises for four [51] years;

That the defendant Hama occupied his premises for 19 years;

That the defendant Nonoshita occupied his premises for seven years;

(Testimony of Dr. W. S. Ohira.)

That the defendant Hatashita occupied his premises for five years;

That the defendant Nakamura occupied his premises for 18 years;

That the defendant Yamamoto occupied his premises for three years;

That the defendant Tanaka occupied his premises for five years;

That the defendant Koiso occupied his premises for six years.

And the witness has already testified that he had occupied the premises for approximately 16 years.

Mr. Hurley: If the court please, the government will waive as to the form of the proof, of the offer of proof, but we will object—

The Court (Interposing): What is that?

Mr. Hurley: The government will waive the form of the offer of proof but will object to the substance of the offer of proof on the ground that the facts set forth in the offer do not tend to shed and light upon the question of fair removal [52] value of this property, nor does the evidence fall within the issues framed by the pleadings in this case.

The Court: I think that objection is well taken. However, you should have in your offer, in addition to the names, the numbers of the parcels.

Mr. Okrand: I am going to do that. I had that in mind.

Mr. Hurley: I am perfectly willing to stipulate that you may supplement the offer by giving the appropriate parcel numbers to the property.

(Testimony of Dr. W. S. Ohira.)

Mr. Okrand: Yse. As a matter of fact, I believe the record should also contain, as a part of the record itself, the parcel number and the person who owned the parcel.

Even as a part of the government's case, I think that probably should have been in; and if there is no objection, I shall state what parcel was owned by what defendant so that the record will show the parcel number and the defendant's name. Also, your Honor already has the evaluation, even on the government's theory.

The Court: Why do you not gather all this together and put it in the record in some written form? Then you will have everything in there that you want: Parcel number blank, owned by so-and-so, occupied so many years, and whatever else you want to make your offer include.

Mr. Okrand: Very well. But does not your Honor feel [53] that even aside from our offer that the parcel number should be identified with the name?

The Court: I think it should be. I do not know how it is relevant, but as long as you are making the offer, you ought to make a complete offer.

Mr. Okrand: What I mean is, aside from the offer of proof but even as a part of the proof that is before this court already, all we have is the parcel number and the evaluation on the removal theory.

It seems to me that those parcel numbers should be identified with the names of the defendants.

The Court: I think so. If you pay the money

(Testimony of Dr. W. S. Ohira.)

over, if you do pay the money, you want to know to whom you are paying it.

Mr. Hurley: If the court please, in explanation of the reason that the government did not give the names of the owners of the parcels when the record of parcels at issue was read to your Honor at the outset by me as representing the government, it is this: The declaration of taking has been filed, and in and by that declaration of taking the parcels are described; the amount of the estimated compensation is indicated.

The defendants are all named by the amended complaint. What we are condemning is the right to remove this property, or the compensation for the withdrawal, the right of the [54] owner to remove the property. The fact of who owns it is of no importance in arriving at what that damage is worth to the owner, and since we have the parties properly named in the proceedings, it was not incumbent upon the plaintiff to indicate those names in the record at the time.

However, we have no objection to doing it.

The Court: It is not incumbent upon the court in a condemnation proceeding to make a determination including the persons to whom the award shall go.

Mr. Hurley: At the time the matter is before the court on a hearing as to the evaluation of the property condemned, all the parties who have interest are before the court. The only question is the amount of the value of the taking.

(Testimony of Dr. W. S. Ohira.)

The Court: To whom are you going to pay the money?

Mr. Hurley: Then if there is any dispute under the declaration of taking act, at the time the question of who the parties are and their interests, that becomes paramount; and it is indispensable then to the issue to determine who the parties are.

Actually the defendants are named by the pleadings, and your Honor has before him the pleadings and, therefore, has judicial knowledge of the names of those defendants.

For that reason I did not think it was necessary to enumerate them.

Mr. Okrand: Would it not be better to do it, and then [55] we will be clear on it?

Mr. Hurley: I am perfectly willing to do it but I did not want to make it appear that it was something which ought to have been done because the law does not legally require it. But I am very happy to join you in doing it, I assure you of that, Mr. Okrand.

Mr. Okrand: Well, let us do it, then.

The Court: I think the court is required to determine the parties respectively entitled to the award.

Mr. Hurley: Yes, sir, that is correct. And that, of course, is before your Honor by virtue of the appearance of Mr. Okrand on behalf of certain defendants.

The Court: Yes.

Mr. Hurley: He has identified them and indicated their interests. In addition, your Honor

(Testimony of Dr. W. S. Ohira.)

has before you the amended complaint in condemnation which enumerates all of the defendants and states the parcels in which they have an interest. And in addition your Honor has before you the original complaint in condemnation, I mean, the original declaration of taking and the amended declaration of taking and several supplemental declarations of taking.

Mr. Rosensweig is familiar with the details of this case and I believe that is correct, is it not, Mr. Rosensweig?

Mr. Rosensweig: Yes. [56]

The Court: You must establish or prove. The complaint does not establish or prove.

Mr. Hurley: They are taken *pro indefenso* to the extent they are not denied by the answer of the defendants.

The Court: That is true. However, you can supply the record with all of that.

Mr. Hurley: We are glad to do it. I merely wanted to be sure that the technical position of the plaintiff was understood.

Mr. Okrand: Would counsel for the plaintiff want me to read off the names and parcel numbers? Or would you care to do it?

Mr. Hurley: You can read it, and I will check with you; and if it is incorrect, I will—

Mr. Okrand (Interposing): Parcel No. 290—

The Court: Just a moment. I think we should have a little recess at thi time.

(Testimony of Dr. W. S. Ohira.)

Mr. Hurley: Very well, your Honor.

(Brief recess.)

Mr. Okrand: When we left off, your Honor, I think I had been sort of chosen as spokesman to give the information to the court as to the names of the defendants to be identified with the particular parcel numbers.

I will go on from there.

Parcel No. 290 was owned by Southern California Fishermen's [57] Association.

Parcel No. 294 was owned by Dr. W. S. Ohira.

Parcel No. 314 was owned by Koto Yamamoto.

Parcel No. 326 was owned by M. Iwasaki;

Parcel No. 338 by Masso Seiko, now deceased, and so to the parcel is owned by his wife Roku, R-o-k-u;

Parcel 354 by Ben Maeda, M-a-e-d-a;

Parcel 355 by Sen Tanaka;

Parcel 356 by Miyoji Kawasaki, K-a-w-a-s-a-k-i—

Mr. Hurley: How do you spell that first name, for the reporter, too?

Mr. Okrand: M-a-y-o-j-i. I think he has a list there.

Parcel 357 by Naga Nomura;

Parcel 358 by Yosaburo Hama;

Parcel 362 by T. Koiso;

Parcel 366 by T. Nonoshita;

Parcel 367 by Jim Teizo Hatashita;

Parcel 368 by K. Nakamura; and

Parcel 373-A by T. Koiso.

Mr. Hurley: That is correct.

(Testimony of Dr. W. S. Ohira.)

Mr. Okrand: That concludes what we have, your Honor.

The Court: Well, I do not think there is any need of taking this case under submission.

Mr. Okrand: It has been pretty thoroughly argued thus far, I think. [58]

Mr. Hurley: The government will waive argument.

The Court: Will that be a judgment for one amount? How do you want that judgment?

Mr. Hurley: If the court please, if your Honor wishes (and I merely make this by way of suggestion) the court could indicate the judgment would be for the plaintiff on the basis of the issues and that the plaintiff be instructed to prepare findings of fact and conclusions of law which will be submitted, a draft of the judgment, to the defendants' counsel. And if you wish to settle that, we can do that at a later date.

The Court: Well, I understand that. But in preparing your findings, will you—

The Clerk (Interposing): The court will have to make a finding of value as to each parcel.

Mr. Hurley: Yes.

The Court: A finding as to each parcel and naming the individual, is that correct?

Mr. Hurley: That is correct. That is correct, because your Honor is setting as the jury; so we must have a finding as to each parcel, naming each parcel.

The Court: Then the judgment will be in favor of these respective defendants named, as named by

(Testimony of Dr. W. S. Ohira.)

counsel for the defendants, or whomsoever is entitled to receive the award.

Mr. Hurley: Yes, for the respective parcels.

The Court: For the parcels involved.

Mr. Hurley: That is correct.

The Court: In the amounts as testified to by the witness as representing the removal value of the property.

Mr. Hurley: Your Honor, that is the correct instruction in the preparation, and I shall so prepare them.

The Court: You will prepare a finding, and also as to 373-A you will, by that time, have arrived at that valuation.

Mr. Okrand: We believe so, your Honor.

The Court: What else is there to be placed in the record? Anything else?

Mr. Hurley: The findings of fact and conclusions of law.

Mr. Okrand: And the judgment.

Mr. Hurley: And we will prepare a draft of the judgment and present that at the time of the findings of fact and conclusions of law are prepared.

The Court: What do you want? Ten days? Fifteen days?

Mr. Hurley: Ten days will be ample, sir.

The Court: Ten days to prepare your findings, and—

Mr. Hurley: I will submit them to Mr. Okrand representing the defendants within seven days: so

(Testimony of Dr. W. S. Ohira.)

he will have three days to examine them and then if we have any differences, we [60] will come in at that time and settle them.

Mr. Okrand: I am sure the form will be as according to law.

Mr. Hurley: Thank you.

The Court: Now, you will supply the record with a statement from the appraiser?

Mr. Hurley: Yes, sir, we will do that, sir.

The Clerk: Is that to be received by me and marked as an exhibit?

Mr. Hurley: Yes.

The Clerk: Government's Exhibit No. 1?

The Court: Is it stipulated that it may be marked an exhibit?

Mr. Hurley: Yes.

Mr. Okrand: We will so stipulate.

The Court: A joint exhibit?

Mr. Hurley: A joint exhibit, yes.

The Court: Very well.

Mr. Hurley: Do you wish it signed and verified by the witness, sir?

The Court: Yes, I think he should certify that this statement is in accordance with his testimony which will be detailed as set out in the exhibit.

Mr. Hurley: Yes, sir.

(Whereupon, at 3:58 o'clock p. m. August 12, 1947, the hearing in the above-entitled matter closed.) [61]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 15th day of October, A. D., 1948.

/s/ ROBERT T. DOIDGE,
 Official Reporter.

[Endorsed]: Filed Nov. 22, 1948.

[Endorsed]: No. 11956. United States Court of Appeals for the Ninth Circuit. Southern California Fishermen's Association, et al., Appellants, vs. United States of America, Appellee. Supplemental Transcript of Record, Appeal from the United States District Court for the Southern District of California, Central Division.

Filed November 22, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 11956

UNITED STATES OF AMERICA,

Plaintiff,

vs.

40 ACRES OF LAND IN LOS ANGELES
COUNTY, et al.,

Defendants.

DESIGNATION FOR THE PRINTING OF ALL
MATTER DESCRIBED IN COUNTER-
DESIGNATION OF CONTENTS OF REC-
ORD ON APPEAL AS AMENDED BY
WITHDRAWAL OF ITEM 3 OF SAID
COUNTER-DESIGNATION BY APPELLEE

To the Clerk of the above entitled Court:

Pursuant to Rule 19 (6) of the rules of this Court, Appellee hereby designates as the parts of the record it believes necessary for consideration on appeal and upon which it intends to rely the following:

All of the record as certified to this Court by the Clerk of the District Court for the Southern District of California pursuant to the counter-designation of contents of record on appeal filed August 17, 1948, as modified by the withdrawal of Item 3 thereof, which matters designate in the counter-

designation of the appellants as so modified it does hereby designate for printing as a part of the record hereof.

/s/ JAMES M. CARTER,
United States Attorney.

[Endorsed]: Nov. 22, 1948. Paul P. O'Brien,
Clerk.